

Dobrich, et al.  
John M. Evans

v.  
C.A. # 15-120 (JJF)

Indian River School District, et al.  
October 18, 2006

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1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF DELAWARE  
3   MONA DOBRICH and MARCO           :   C.A. No. 15-120 (JJF)  
4   DOBRICH, Individually and       :  
5   as parents and next friend       :  
6   of ALEXANDER DOBRICH,           :  
7   SAMANTHA DOBRICH, JANE DOE       :  
8   and JOHN DOE, Individually       :  
9   and as parents and next           :  
10   friend of JORDAN DOE and         :  
11   JAMIE DOE,                       :  
12                                       :  
13                   Plaintiffs,       :  
14                                       :  
15                   v.                 :  
16                                       :  
17   INDIAN RIVER SCHOOL             :  
18   DISTRICT, et al.,               :  
19                                       :  
20                   Defendants.       :  
21                                       :  
22                   . . . . .  
23                   Videotaped Deposition of JOHN M. EVANS,  
24   taken pursuant to notice, on Wednesday, October 18,  
25   2006 at 9:13 a.m. at 31 Hosier Street, Selbyville,  
26   Delaware, reported by Lorena J. Hartnett, a Registered  
27   Professional Reporter and Notary Public.  
28                   . . . . .  
29   APPEARANCES:  
30                   THOMAS ALLINGHAM, ESQUIRE  
31                   RICHARD HORVATH, ESQUIRE  
32                   BRIAN LENHARD, ESQUIRE  
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36  
37  
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1  
2 APPEARANCES (CONTINUED):  
3 JARROD SHAU, ESQUIRE  
4 Drinker, Biddle & Reath, LLP  
5 One Logan Square  
6 18th and Cherry Streets  
7 Philadelphia, PA 19103-6996  
8 Attorney for the Defendants  
9  
10  
11  
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1 VIDEOGRAPHER: Okay. This is the  
2 videotaped deposition of John M. Evans taken  
3 by the plaintiffs in the matter of Dobrich  
4 et al. versus Indian River School District,  
5 et al., Civil Action Number 15-120.  
6 The deposition is taking place at 31  
7 Hosier Boulevard in Selbyville, Delaware, on  
8 October 18, 2006 at approximately 9:13 a.m..  
9 The court reporter is Lorena Hartnett from  
10 the firm of Wilcox and Fetzer.  
11 My name is Mark Buckmaster, a video  
12 specialist from Discovery Video Services  
13 Incorporated in association with Wilcox and  
14 Fetzer. Counsel will now introduce  
15 themselves and the reporter will swear in  
16 the witness.  
17 MR. ALLINGHAM: My name is Tom  
18 Allingham. I represent the plaintiffs, and  
19 with me are Richard Horvath and Brian  
20 Lenhard.  
21 MR. SHAU: My name is Jarrod Shaw, and  
22 I represent the defendants.  
23  
24

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1  
2 JOHN M. EVANS,  
3 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:  
4 DIRECT EXAMINATION ON BEHALF OF THE PLAINTIFFS  
5 BY MR. ALLINGHAM:  
6 Q. Mr. Evans, because we have to have a record  
7 of this, I am going to give you the short version of  
8 what I have already given you. I am going to ask you  
9 questions. Please tell me if you don't understand the  
10 question. I will try to fix it for you.  
11 If you answer a question without telling me  
12 that you think it's problematic, it's likely that the  
13 ultimate audience of this deposition may assume that  
14 you did understand it, so be sure that we are on the  
15 same wavelength.  
16 A. I understand.  
17 Q. Also answer out loud. Please don't nod or  
18 say uh-huh or nuh-uh, because it's hard for the court  
19 reporter to take those words down.  
20 You were a member of the school board of  
21 Indian River?  
22 A. Yes, I was.  
23 Q. How long were you a member of the school  
24 board?

2 (Pages 2 to 5)

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1 **A. Ten years.**  
2 Q. You went off the school board in 2005?  
3 **A. 2006.**  
4 Q. 2006. So, roughly speaking, from 1996 to  
5 2006 you were on the board?  
6 **A. That's correct.**  
7 Q. Okay, why did you run for the school board?  
8 **A. I had several reasons. I had been involved**  
9 **in the Sussex Central Middle School PTA for three**  
10 **years, where both my children attended, and in 1996**  
11 **when the district passed the expense referendum, one**  
12 **of the commitments that the district made was to see**  
13 **that the funds were allocated according to what they**  
14 **had informed the public of. There were certain monies**  
15 **to be spent on certain, in certain areas.**  
16 **And, having been involved in the PTA and my**  
17 **children still in school, I felt the need to run for**  
18 **the board to make sure that the district adhered to**  
19 **the promise they made the voters in the 1996 expense**  
20 **referendum.**  
21 **And that was my main reason. And also being**  
22 **involved because my kids were both in the school**  
23 **district in middle school at that time.**  
24 Q. What was the promises, as you understood it,

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1 that the district had made to the voters in the '96  
2 expense referendum?  
3 **A. There was promises to spend certain amounts**  
4 **of money on the science equipment, on textbooks,**  
5 **supplies, also for teachers. We were short on**  
6 **teachers because of the funding. Those were some of**  
7 **the main areas that I can recall.**  
8 Q. And these areas that you have identified are  
9 ones that were particularly important to you?  
10 **A. Yes, they were. We didn't need the funding**  
11 **for teachers. We had the allotment from the state**  
12 **that we could hire teachers. The state funding was**  
13 **there, but we didn't have the local funds to pay for**  
14 **the teachers, so this referendum provided that funding**  
15 **to pay for those teachers, and I thought that was**  
16 **important. We needed the teachers; we needed the**  
17 **supplies; we needed the textbooks. I think some of**  
18 **the textbooks at that point were ten years old, so I**  
19 **felt the need to get involved in that.**  
20 Q. Were you concerned that, about the  
21 possibility that the district might spend funds on, in  
22 areas that were not the subject of the district's  
23 promise during the referendum?  
24 **A. Now, is that before I ran or while I was on**

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1 **the board?**  
2 Q. I am still talking now about your desire to  
3 make sure that the board kept its promise. Were you  
4 worried it would not keep its promise?  
5 **A. No, sir, I was not.**  
6 Q. All right, if you weren't worried about it,  
7 why did you run for the board to make sure that it did  
8 keep its promise?  
9 **A. Well, I didn't know the board, but I just**  
10 **felt if I was involved in it, I could see that it was**  
11 **spent the way that it should be. I don't have any**  
12 **concern that the board would not have done so.**  
13 Q. Just a generic desire to be involved in  
14 making sure that the money was spent wisely?  
15 **A. That's right.**  
16 Q. When you ran for the board, were you aware  
17 that the board opened its meetings with prayers?  
18 **A. No, I did not.**  
19 Q. Did that effect in any way your decision to  
20 run for the board, the fact that the board opened its  
21 meetings with prayers?  
22 **A. As I stated, I didn't know that they opened**  
23 **their meetings in prayer, so it had no bearing in my**  
24 **running for the board.**

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1 Q. It then follows as the night to day that it  
2 had no bearing?  
3 **A. It had no bearing on my decision. I was not**  
4 **aware of that.**  
5 Q. Had you attended any board meetings prior to  
6 your decision to run for the board?  
7 **A. One, one board meeting.**  
8 Q. And was that a board meeting on the expense  
9 referendum?  
10 **A. No, that was later. I don't think -- No, I**  
11 **don't think it was.**  
12 Q. Why did you attend that board meeting?  
13 **A. Just to get a feel for what happened at a**  
14 **board meeting.**  
15 Q. Did you think that the meeting that you  
16 attended before you joined the board was conducted in  
17 a solemn and serious and appropriate manner?  
18 **A. Yes, I do.**  
19 Q. Did you form a view as to whether the opening  
20 of that meeting with a prayer was responsible for that  
21 meeting's being conducted in a solemn, serious and  
22 appropriate manner?  
23 **A. I don't remember whether that board meeting**  
24 **was opened to prayer or not. I don't remember that.**

3 (Pages 6 to 9)

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1 Q. I take it it did not make a big impression on  
2 you one way or another as a member of the public at  
3 that meeting?  
4 **A. It did not, no. I just don't remember**  
5 **whether they opened that meeting with prayer or not.**  
6 Q. Am I right, Mr. Evans, that you don't have  
7 any personal information prior to, for the period  
8 prior to your joining the board, about whether the  
9 board had a practice or policy of opening meetings  
10 with a prayer?  
11 **A. I had no knowledge whether they did or did**  
12 **not.**  
13 Q. Okay, now let's go to the ten years that you  
14 did serve on the board. Is it correct that the board  
15 had a practice or policy of opening its meetings with  
16 a prayer?  
17 **A. Yes.**  
18 Q. And that would be its regular meetings;  
19 correct?  
20 **A. That's correct.**  
21 Q. It's also correct, is it not, that the board  
22 did not have a practice of opening its special  
23 meetings with a prayer?  
24 **A. That's correct.**

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1 Q. And it is also correct, is it not, that the  
2 board does not open its executive sessions with a  
3 prayer?  
4 **A. That's correct.**  
5 Q. And that question having to do with executive  
6 sessions, that's true even if the executive session  
7 takes place before the prayer that's offered at the  
8 regular meeting; correct?  
9 **A. Sorry, repeat that question.**  
10 Q. Let me make it into two questions. First of  
11 all, do you recall that there have been times when the  
12 board goes into executive session before any prayer is  
13 offered at the regular meeting?  
14 **A. That's correct.**  
15 Q. And even at those, if you will, pre-prayer  
16 executive sessions, the board does not open those  
17 sessions with a prayer; correct?  
18 **A. That's correct.**  
19 Q. Do you know why?  
20 **A. No, I never really thought about it, to be**  
21 **honest.**  
22 Q. Do you know why the board does not open its  
23 special meetings with a prayer?  
24 **A. No, I don't.**

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1 Q. The matters treated in executive session and  
2 at special meetings are just as important as the  
3 matters treated at regular meetings, aren't they?  
4 **A. Yes, they are.**  
5 Q. The proceedings are conducted in just as  
6 solemn a manner at special meetings as at regular  
7 meetings, is that correct, in your experience?  
8 **A. Yes, I would say yes.**  
9 Q. And the executive sessions, similarly, are  
10 just as serious and solemn as the regular sessions?  
11 **A. Yes.**  
12 Q. Have you ever heard anyone at anytime raise  
13 the issue of why executive sessions and special  
14 meetings are not opened with a prayer?  
15 **A. No, I have never, never heard that issue.**  
16 Q. Okay. What did you do to prepare for the  
17 deposition today?  
18 **A. The only thing that I did was about a week**  
19 **ago read the policy on religion.**  
20 Q. Seems like a sensible thing to do.  
21 **A. That's the only thing I have done to prepare.**  
22 Q. Did you meet with your lawyers?  
23 **A. Personally, you mean with the district**  
24 **lawyers?**

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1 Q. Yes.  
2 **A. Yes, I did.**  
3 Q. All right, and that was to help prepare for  
4 the deposition; correct?  
5 **A. Yes.**  
6 Q. Okay. Who was at that meeting?  
7 **A. Let's see, Jarrod was there.**  
8 Q. Mr. Shau?  
9 **A. Yes, and I don't know all the last names.**  
10 Q. Jason Gosselin?  
11 **A. Jason Gosselin was there. Jeff. I don't**  
12 **know Jeff's last name. Mr. Bireley was there,**  
13 **Dr. Hattier, and Mr. Hastings, Mr. Helms, I believe,**  
14 **and myself. And I believe that's the list of people**  
15 **who were there.**  
16 Q. The board doesn't hire lawyers just based on  
17 the fact that their first name begins with J, do they?  
18 John, John, Jeff, Jason, and Jarrod.  
19 **A. Well --**  
20 Q. You don't have to answer that. And that  
21 meeting took place last week, is that right, or was it  
22 the week before?  
23 **A. A week ago last Thursday.**  
24 Q. Okay. There has been testimony from one of

4 (Pages 10 to 13)



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1 the participants at that meeting that Mr. Gosselin  
2 read from one or more documents in that meeting. Do  
3 you recall that?  
4 **A. Yes.**  
5 Q. And do you know what documents Mr., document  
6 or documents Mr. Gosselin was reading from?  
7 **A. He read from the -- I don't know the exact**  
8 **title, but the prayer policy.**  
9 Q. The one that you reviewed?  
10 **A. No, he read the one in reference to praying**  
11 **at board meetings, and I don't remember the exact**  
12 **title of that policy.**  
13 Q. I see.  
14 **A. Board meeting prayer policy. I don't**  
15 **remember exact title.**  
16 Q. Do you recall Mr. Gosselin reading from any  
17 other document?  
18 **A. No, I do not.**  
19 Q. The policy that you reviewed to prepare for  
20 this deposition, was that also the board prayer policy  
21 or the religion in schools policy?  
22 **A. That was the religion in schools policy.**  
23 Q. And why did you read that policy?  
24 **A. Just to become familiar with it. Again, it's**

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1 are."?  
2 **A. Words of maybe similar to that nature that**  
3 **they think they know who the Does are.**  
4 Q. And who told you that?  
5 **A. I believe that was Dr. Hattier.**  
6 Q. And how did that conversation come up?  
7 **A. That occurred in one executive session**  
8 **meeting that I am aware of.**  
9 Q. Tell me as much as you can about when that  
10 executive session occurred. Tell me the year first,  
11 and then we can try to pin it down.  
12 **A. Well, that would have been 2006, probably**  
13 **sometime during the summer months. I can't exactly**  
14 **tell you which month it was.**  
15 Q. This past summer?  
16 **A. Yes.**  
17 Q. And how did the conversation come up? What  
18 prompted Dr. Hattier to make that statement?  
19 **A. That would have been during discussion about**  
20 **this lawsuit.**  
21 Q. Was there a discussion going on about who the  
22 Doe family was?  
23 **A. In what respect?**  
24 Q. In any respect. It seems like an odd -- It

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1 **been months since I read it.**  
2 Q. Did you understand that this deposition is  
3 limited to the issues raised in connection with the  
4 school board prayer?  
5 **A. Yes, I do.**  
6 Q. Have you had occasion to talk with anyone who  
7 has already been deposed in this case about their  
8 depositions?  
9 **A. No, sir, I have not.**  
10 Q. Good thinking. Were you shown any documents  
11 at the meeting with your lawyers, the district's  
12 lawyers?  
13 **A. No, sir, I was not.**  
14 Q. Do you know who the Does are?  
15 **A. No, sir, I do not.**  
16 Q. Has anyone ever told you who the Does are?  
17 **A. No, no one has told me.**  
18 Q. Has anyone ever told you that that person  
19 knows who the Does are?  
20 **A. The person -- Say again.**  
21 Q. If I walked up to you and said, "I know who  
22 the Does are," that's the question I am asking you,  
23 has anyone ever walked up to you or come up to you and  
24 said in words or substance, "I know who the Does

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1 seems like a non-sequitur for someone to just  
2 announce, "I think I know who the Does are." What was  
3 the context in which that statement came up?  
4 **A. Well, there was discussion in reference to**  
5 **the settlement and the Does being part of that**  
6 **settlement, and I believe the discussion, the**  
7 **discussion did come up in reference to one or both of**  
8 **the Doe children attending the schoolyards.**  
9 Q. Okay.  
10 **A. That's the part I remember.**  
11 Q. Okay, understood. Does the school board have  
12 final say over school choice issues?  
13 **A. The school choice, yes, they do.**  
14 Q. And do you recall any discussion at the board  
15 level, executive session, regular meeting, special  
16 meeting, about school choice, school choices -- That's  
17 an awkward question. Let me ask you again.  
18 Do you recall any discussion at the board  
19 level in executive session, regular session, or  
20 special session, of school elections made by or on  
21 behalf of the Doe children?  
22 **A. I don't understand when you say school**  
23 **elections.**  
24 Q. Choice.

5 (Pages 14 to 17)

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1 **A. Choice?**  
2 Q. The school choice process is there is an  
3 application by the family on behalf of the children;  
4 correct?  
5 **A. Yes.**  
6 Q. Okay.  
7 **A. Right.**  
8 Q. And do you recall any discussion at the board  
9 level -- I just want to know yes or no. Okay?  
10 **A. Yes.**  
11 Q. Do you recall any discussion at the board  
12 level of applications for school choice issues by the  
13 Doe family on behalf of their children?  
14 **A. No.**  
15 Q. Is there a particular board member who is in  
16 charge of school choice issues?  
17 **A. No, not that I am aware of.**  
18 Q. How does the board exercise its authority  
19 over school choice issues? What's the process?  
20 **A. Well, the process, we would receive a list in**  
21 **our board packet by the school giving us the number of**  
22 **children, choice in cadet school, and what area they**  
23 **lived in. There were no names.**  
24 Q. Let me stop you there, because this is more

1 denomination?  
2 **A. Denomination Presbyterian Church in America.**  
3 Q. I'm sorry, the last part of that answer?  
4 **A. Presbyterian Church in America. PCA, it's**  
5 **called.**  
6 Q. What, if any, church do you attend?  
7 **A. East Gate Presbyterian Church.**  
8 Q. Is that in Selbyville?  
9 **A. No, that's on Long Neck Road, Millsboro**  
10 **address.**  
11 Q. Apart from being a member of the congregation  
12 at Ease Gate Presbyterian, do you have any role in  
13 that church?  
14 **A. Currently I share an adult teaching position**  
15 **with the pastor. I am an inactive elder.**  
16 Q. Inactive elder?  
17 **A. Yes.**  
18 Q. What's the difference between an inactive  
19 elder and an active elder?  
20 **A. In our denomination, once you become an**  
21 **elder, you are always an elder. Active means**  
22 **that you are actively participating on the church**  
23 **board.**  
24 Q. I understand, sir. Any other positions?

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1 detailed than I was really looking for.  
2 **A. Okay.**  
3 Q. Is it correct that the board gets a  
4 recommendation from the district and typically  
5 approves that recommendation?  
6 **A. Yes.**  
7 Q. Okay, the board does not, correct me if I am  
8 wrong, but, as I understand it, the board does not  
9 address individual applications?  
10 **A. That's correct.**  
11 Q. Okay. And then a final follow-up, do you  
12 recall anytime at which the board did address  
13 individual applications?  
14 **A. No, I do not.**  
15 Q. And that would be over your entire ten-year  
16 tenure?  
17 **A. That's right.**  
18 Q. Mr. Evans, I apologize, your counsel has  
19 given us informal information about each board  
20 member's religious faith, and I don't have the  
21 interrogatory answer here, so I am just going to ask  
22 you what is your religious faith?  
23 **A. I am a Christian.**  
24 Q. And any particular church that you attend or

1 **A. No, sir.**  
2 Q. In the summer of 2004, did you have any roles  
3 in addition to the ones that you have just identified  
4 for me at the church?  
5 **A. In the summer of 2004?**  
6 Q. To put this in time, the summer of 2004 is  
7 the period of time in which the board, so far as the  
8 record reflects, began considering a school board  
9 prayer policy.  
10 The summer of 2004 is also, August 24, 2004  
11 is when what has come to be known as the big meeting  
12 took place with many hundreds of people at the school  
13 board meeting, so that's the period of time I am  
14 asking you about.  
15 Did you have any roles at East Gate  
16 Presbyterian in addition to the ones you have already  
17 identified during the summer of 2004?  
18 **A. No.**  
19 Q. Okay. Now, I identified for you this  
20 August 24, 2004 meeting. Do you recall that meeting?  
21 **A. Yes, I do.**  
22 Q. Okay. In the days and weeks running up to  
23 that meeting, did you urge or encourage anyone to  
24 attend that meeting?

6 (Pages 18 to 21)

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1 **A. No, sir, I did not.**  
2 Q. Were you aware of anyone from your church,  
3 the East Gate Presbyterian Church, encouraging or  
4 urging anyone to attend that meeting?  
5 **A. Yes, there was.**  
6 Q. And tell me what you recall about that.  
7 **A. Just members coming up to me indicating**  
8 **they were planning on being there, but I never, no, I**  
9 **never encouraged anyone to be there.**  
10 Q. Were you aware that members of your church  
11 were encouraging other members of the congregation to  
12 consider attending the August 24 meeting?  
13 **A. Yes.**  
14 Q. And was there any -- Did that include the  
15 pastor?  
16 **A. No, as far as the pastor, he never really**  
17 **spoke to me one way or the other. As far as I know,**  
18 **he didn't talk to anybody else about attending, if I**  
19 **am answering your question.**  
20 Q. I think the second part you did answer my  
21 question. So, as I understand it, you are not aware  
22 that the pastor of your church urged or encouraged  
23 anyone to attend?  
24 **A. No, I am not.**

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1 Q. Okay. In the course of preaching during any  
2 service, do you recall the pastor saying that it was  
3 important or encouraging people to attend the  
4 August 24 meeting?  
5 **A. Repeat the first part of that question?**  
6 Q. During the course of a sermon or during the  
7 course of an adult education class, or in any context?  
8 **A. No, he, as far as I know, he never made that**  
9 **statement in a public session.**  
10 Q. And do you recall -- What is your pastor's  
11 name or what was the pastor's name in 2004?  
12 **A. Pastor Nabb, Pastor Gary Nabb.**  
13 Q. Do you recall Pastor Nabb in any kind of a  
14 private conversation in summer 2004 urging people to  
15 attend the August 24 meeting?  
16 **A. No, I don't.**  
17 Q. Do you recall the August 24 meeting in part  
18 because so many people were there? Does it stand out  
19 in your mind?  
20 **A. Yes, it does.**  
21 Q. When you arrived at the meeting -- By the  
22 way, did you arrive alone?  
23 **A. Yes.**  
24 Q. Were you surprised to find so much commotion

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1 at the meeting?  
2 **A. Yes, I was.**  
3 Q. There were police cars there; is that right?  
4 **A. I don't recall any when I arrived.**  
5 Q. The meeting was scheduled for 7:30. Did you  
6 get there early?  
7 **A. Yes, I am usually there 15, 20 minutes early.**  
8 Q. Okay, do you recall that there were speakers  
9 set up in the parking lot?  
10 **A. No, I don't.**  
11 Q. Were there a lot of people milling around?  
12 **A. Yes.**  
13 Q. Were they carrying signs, some of them?  
14 **A. I didn't see anyone with signs when I**  
15 **arrived.**  
16 Q. Did you go straight into the meeting?  
17 **A. Yes.**  
18 Q. When the board goes into the meeting, and I  
19 am using August 24 as an example, but the question is  
20 more general, do you meet somewhere or congregate  
21 somewhere out of the public's eye before you walk into  
22 the room where the meeting is being held?  
23 **A. No.**  
24 Q. So you just walk into the room and take your

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1 seat; is that right?  
2 **A. That's correct.**  
3 Q. At each facility -- Well, let me ask a  
4 preliminary question. Where does the board hold its  
5 meetings?  
6 **A. At that particular time?**  
7 Q. No, generally speaking.  
8 **A. In one of the schools.**  
9 Q. And is it typically the case that the board  
10 holds its meetings at the high school in the district?  
11 **A. It is now, but it wasn't then.**  
12 Q. All right. In 2004 the district was in the  
13 process of completing construction of two new high  
14 schools; is that right?  
15 **A. That's correct.**  
16 Q. All right. Where were high school classes  
17 being held during the construction process?  
18 **A. Well, they were being held at the original**  
19 **high school.**  
20 Q. Is it correct that up until the new high  
21 schools were completed, the board meetings were  
22 rotated among all the schools in the district or just  
23 some of them?  
24 **A. Just some.**

7 (Pages 22 to 25)

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1 Q. And was there a known or accepted group of  
2 schools at which you held your meetings?  
3 **A. Yes.**  
4 Q. Was the idea to try to move the meetings  
5 around geographically because the district is kind of  
6 large?  
7 **A. I believe that's so, yes.**  
8 Q. Okay, this meeting, August 24, was held at  
9 Frankford Elementary School?  
10 **A. That's right.**  
11 Q. All right, and was that one of the schools  
12 that had been in the rotation, if you will?  
13 **A. Yes.**  
14 Q. At Frankford Elementary School, the meetings  
15 were held in the cafeteria?  
16 **A. That's right.**  
17 Q. Were most -- Were the meetings held in a  
18 cafeteria at all the schools that were in the rotation  
19 at that time?  
20 **A. Yes, yes.**  
21 Q. When you went into executive session, was  
22 there -- Were you aware that there was a separate room  
23 where you could go and have your executive session  
24 different from the cafeteria?

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1 **A. Yes.**  
2 Q. Okay. And over the course of time I assume  
3 you came to know what those rooms were at each school?  
4 **A. Yes.**  
5 Q. For example, at the Frankford Elementary  
6 School, where did you go for executive session?  
7 **A. Usually the library.**  
8 Q. And is that usually at each of the schools  
9 where you went, the library?  
10 **A. No, the, on occasion -- Yes, I believe it**  
11 **was.**  
12 Q. At the high schools, the new high schools,  
13 the meetings that have been held since the new high  
14 schools were constructed, when you arrive at the  
15 meeting, do you go directly -- Those meetings are held  
16 in the auditorium; correct?  
17 **A. Yes.**  
18 Q. And do you go directly to your seat on the  
19 stage, or do you congregate with your fellow board  
20 members off stage?  
21 **A. Let me rephrase what I just said. We didn't**  
22 **meet in the auditorium at the high school. We met in**  
23 **the cafeteria at the new high school.**  
24 Q. And that's the routine; correct?

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1 **A. Yes.**  
2 Q. Have you ever had meetings in the  
3 auditoriums?  
4 **A. Yes.**  
5 Q. Do you know the reason for moving the  
6 meetings from the cafeteria to the auditoriums when  
7 that occurred?  
8 **A. Yes.**  
9 Q. What was the reason?  
10 **A. When we were expecting public attendance.**  
11 Q. Don't you expect public attendance at every  
12 meeting?  
13 **A. I don't expect it, but it has occurred.**  
14 Q. Over time, if it occurs over and over again,  
15 don't you come to expect it?  
16 **A. Well, yes.**  
17 Q. Okay, so that's not a reason to distinguish  
18 one meeting from another. What was it that caused the  
19 meeting to be held in the auditorium instead of the  
20 cafeteria, as you recall?  
21 **A. Are you referring to a specific time period,**  
22 **meeting, or any meeting?**  
23 Q. If the reason is meeting specific, we can try  
24 to figure out which meetings occurred in the

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1 auditorium and why. I thought there was just a  
2 general reason that you could articulate.  
3 **A. The only one that I can recall is a meeting**  
4 **at -- I forget which high school, but we met in the**  
5 **auditorium and that was the vote, the board vote on**  
6 **the school prayer, the board school prayer.**  
7 Q. That is the vote to adopt the board policy?  
8 **A. No.**  
9 Q. Was that the vote to reject the proposed  
10 settlement of this litigation?  
11 **A. Yes, I believe it was.**  
12 Q. Okay, and you understood that to be a vote on  
13 school board prayer?  
14 **A. No.**  
15 Q. Okay. I am not making the connection, so let  
16 me just walk through it with you. That meeting took  
17 place in February of 2006, and it was held at the  
18 auditorium of I think it was the Sussex Central High  
19 School; correct? I will get to that. I will get the  
20 minutes so we can see where it was at.  
21 You identified that meeting as the meeting at  
22 which the board prayer issue was addressed. Could you  
23 tell me why that's how you identified that meeting?  
24 **A. No, I really can't. I said board prayer**

8 (Pages 26 to 29)



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1 **issue meaning the entire issue.**  
2 Q. The entire issue being what?  
3 **A. Well, I -- That's just what I said. I can't**  
4 **explain why I said it, but it wasn't the board prayer**  
5 **issue; it was the settlement issue. I made a mistake**  
6 **on what I said.**  
7 Q. Was it your memory that that meeting was  
8 convened in the auditorium because it had to do with  
9 the board prayer issue?  
10 **A. No.**  
11 Q. And you can't explain why that's how you  
12 described the meeting before I identified particularly  
13 what the meeting was?  
14 **A. No, I can't.**  
15 Q. As a board member, did you think at that  
16 February 27, 2006 board meeting that you were voting  
17 on the issue of school board prayer?  
18 **A. No, as I commented earlier, that was a**  
19 **mistake to make that statement. I was confused.**  
20 Q. Did you understand that the school board's,  
21 school board prayer policy would be affected in any  
22 way by the votes that you cast at that February 2006  
23 meeting?  
24 **A. Repeat that.**

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1 Q. Yes.  
2 **A. The first part of that.**  
3 Q. Did you understand that the board's school  
4 board prayer policy would be affected in any way by  
5 the votes that you cast at that meeting?  
6 **A. No.**  
7 Q. And I take it, then, Mr. Evans, that you did  
8 not view your -- Well, let me get a preliminary  
9 question. You voted to reject the settlement;  
10 correct?  
11 **A. Correct.**  
12 Q. In doing so, is it correct that no part of  
13 the consideration that you gave to that vote was the  
14 protection of the school board's right to pray at its  
15 meetings?  
16 **A. Would you repeat that, please?**  
17 Q. In casting any vote, you have to consider  
18 factors that weigh for or against in your decision;  
19 correct?  
20 **A. Right.**  
21 Q. Did the desire to protect the school board's  
22 right to pray at its meetings form any part of your  
23 consideration in determining how to vote on the  
24 settlement?

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1 **A. No.**  
2 Q. And that's because your understanding was  
3 that the school board prayer policy was not going to  
4 be affected by the settlement; correct?  
5 **A. My understanding? I had no idea at that**  
6 **point that we would even be voting on the policy**  
7 **later.**  
8 Q. And when you say you had no idea that you  
9 would be voting on the policy later, what do you mean  
10 by that?  
11 **A. Well, you referred several times in your**  
12 **questions about the school board prayer policy.**  
13 Q. Yes, sir.  
14 **A. Whether my voting on the settlement had any**  
15 **impact on the prayer school board policy, and I**  
16 **answered no, because I wasn't even aware that we were**  
17 **going to have a school board prayer policy to vote on**  
18 **later in the summer.**  
19 Q. Okay. When you said in your earlier answer  
20 you weren't aware that you were going to have a school  
21 board prayer policy to vote on later, you are not  
22 talking about later at the February meeting; you are  
23 talking about later in the summer of 2006?  
24 **A. That's correct.**

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1 Q. Thank you. I misunderstood. Mr. Evans,  
2 during your entire tenure as a board member, would you  
3 agree with me that your first and greatest concern as  
4 a board member is to act in the best interests of each  
5 and every one of the children and youth of the Indian  
6 River School District without distinction as to who  
7 they are or what their backgrounds may be?  
8 **A. Yes, that's correct.**  
9 Q. And did you understand as a board member that  
10 it was your obligation to resist every temptation and  
11 outside pressure to use your school board member  
12 position to benefit either yourself or any other  
13 individual or agency apart from the total interest of  
14 the school district?  
15 **A. Would you read that again, please?**  
16 Q. Yes, and the thrust of this is that board  
17 members are not supposed to act for their own  
18 interests but, rather, are to act for the whole  
19 district. I read this language because it comes from  
20 a board policy, and I want to make sure that you agree  
21 with it. Okay?  
22 **A. Yes.**  
23 Q. Did you understand, as a board member, that  
24 you were required to resist every temptation and

9 (Pages 30 to 33)

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1 outside pressure to use your position as a school  
2 board member to benefit either yourself or any other  
3 individual or agency apart from the total interest of  
4 the school district?  
5 **A. Yes, I understood that.**  
6 Q. And shorthand for that is that policy  
7 requires the board's actions to be for the benefit of  
8 the students; is that correct?  
9 **A. That's correct.**  
10 Q. And not for the benefit of the individual  
11 board members?  
12 **A. That's correct.**  
13 Q. Do you recall when Charles Bireley became  
14 president of the board?  
15 **A. I don't recall the exact. I don't --**  
16 Q. 2005?  
17 **A. 2005? Yes, yes.**  
18 Q. When he became president, did he speak to you  
19 privately about whether you wanted to be, wanted to  
20 open meetings with a prayer?  
21 **A. He would ask me before a meeting if I would**  
22 **be willing to do so.**  
23 Q. Mr. Bireley testified that what he did when  
24 he became president was to ask each board member, not

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1 **A. No, I am sure it was always before the board**  
2 **meeting.**  
3 Q. Okay, and was it, you know, shortly before  
4 the meeting was called to order, or was it the day  
5 before, you know, the morning of the meeting?  
6 **A. No, it was shortly before the meeting when I**  
7 **arrived, he would, when he saw me there, he would ask**  
8 **me before, somewhere between 7:00, 7:30 when I**  
9 **arrived.**  
10 Q. And so if this was the meeting that was being  
11 held in the cafeteria, for example, of one of the high  
12 schools, you would arrive, walk to the table at which  
13 the board member seats are arrayed, and Mr. Bireley  
14 would come up to you and say, "Would you like to give  
15 the prayer at this meeting, John?"  
16 **A. Yes.**  
17 Q. Okay, and what did you respond?  
18 **A. Yes.**  
19 Q. What was your reason or reasons for accepting  
20 Mr. Bireley's invitation to open the meeting with a  
21 prayer?  
22 **A. Whenever I am asked to open in a prayer, I**  
23 **do.**  
24 Q. Why?

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1 before an individual meeting but as a general  
2 proposition, whether the board members wanted to be  
3 included in the group that would be asked to open  
4 board meetings with a prayer. Some board members said  
5 "No, thank you." Some board members didn't respond.  
6 Some board members said yes. Okay? That's a summary  
7 of Mr. Bireley's testimony.  
8 Do you recall Mr. Bireley asking you, not  
9 right before a board meeting, but as a general  
10 proposition, whether you would like to be among the  
11 board members invited to offer a prayer?  
12 **A. No, I don't recall ever being asked that**  
13 **question by Mr. Bireley.**  
14 Q. So your recollection is that Mr. Bireley  
15 asked you before an individual board meeting whether  
16 you would like to offer a prayer?  
17 **A. That's correct.**  
18 Q. And did he do that after the meeting was  
19 called to order or privately beforehand?  
20 **A. Usually beforehand.**  
21 Q. And you say usually beforehand. Is that  
22 because you are not sure or because you recall at  
23 least one meeting where he asked you after the meeting  
24 was called to order?

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1 **A. Because I, that's my nature. That's my**  
2 **Christian background.**  
3 Q. And is that your practice no matter where the  
4 invitation is extended to you?  
5 **A. That's right.**  
6 Q. So if you were sitting at dinner and someone  
7 asked you to offer a blessing, you would accept the  
8 invitation?  
9 **A. That's correct.**  
10 Q. At a school board meeting, you would accept  
11 the invitation?  
12 **A. That's correct.**  
13 Q. Whatever the context, at least the context in  
14 which invitations have been extended to you, you  
15 always accept the invitation?  
16 **A. That's correct.**  
17 Q. Okay, and what is -- You may not have a  
18 purpose in mind, but, if you do, what is the purpose  
19 that you have in mind for offering a prayer?  
20 **A. A school board prayer or any prayer?**  
21 Q. Um, are there different purposes depending on  
22 the context in which you are invited, in your mind?  
23 **A. No.**  
24 Q. Okay, then let me just ask you generally,

10 (Pages 34 to 37)

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1 what's your purpose in agreeing to offer the prayer?  
2 **A. Well, my purpose is when I pray is to seek**  
3 **God's will, to seek his guidance and protection, to**  
4 **seek his grace, to acknowledge that in all things that**  
5 **I do I need his guidance and will.**  
6 Q. Is that a good summary?  
7 **A. I think so.**  
8 Q. In offering the school board prayers that you  
9 have offered, that is the prayers to open the school  
10 board meetings, it was your intention to seek God's  
11 guidance, will, protection and grace; is that correct?  
12 **A. That's correct.**  
13 Q. And were you seeking God's guidance, will,  
14 protection and grace for yourself only?  
15 **A. No, for the school board.**  
16 Q. That was going to be my next question.  
17 **A. For the school board as a collective body.**  
18 Q. Yes, sir. So that the audience or the  
19 beneficiary, the intended beneficiary of your prayer,  
20 were the ten or whatever number, but the ten board  
21 members at the meeting; correct?  
22 **A. Correct.**  
23 Q. Did you intend for there to be a beneficiary  
24 of the prayer or audience of the prayer other than the

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1 prayer.  
2 **A. Did you want me to read this?**  
3 Q. You know, I have enough questions on it that  
4 maybe it's sensible for you to read it before I begin.  
5 Have you read it?  
6 **A. Yes.**  
7 Q. All right. The purpose of the prayer that a  
8 member of the board may choose to open its meeting  
9 with is set forth in paragraph one; is that correct?  
10 **A. Yes.**  
11 Q. And that purpose is the words, "in order to  
12 solemnify its proceedings." Correct?  
13 **A. Correct.**  
14 Q. The board policy does not say, it doesn't  
15 repeat your exact words and it doesn't say in  
16 substance, "In order to seek God's guidance, will,  
17 protection and grace for the decisions to be made if  
18 needed," does it?  
19 **A. Are you asking me if it does or does not**  
20 **state those specific words?**  
21 Q. Correct.  
22 **A. That you just stated?**  
23 Q. Correct.  
24 **A. I don't see it on there, no.**

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1 ten, other than or in addition to the ten board  
2 members?  
3 **A. Repeat that, please.**  
4 Q. Yes. In offering the prayers that you  
5 offered to open the school board meeting, did you  
6 intend for the prayers to have as beneficiaries or  
7 audiences, if you will, persons other than the ten  
8 school board members?  
9 **A. No, not -- I offered my prayer for guidance**  
10 **for the body of the school board, that we might make**  
11 **good decisions for our school district.**  
12 Q. And I have asked this question of several  
13 board members, and I think it's fair to say that the  
14 answers were unanimous that the idea is that with  
15 God's guidance it is possible or likely that board  
16 members will make better decisions than without God's  
17 guidance; is that correct?  
18 **A. That's correct.**  
19 Q. And that's why you pray not only for yourself  
20 but also for the other board members?  
21 **A. That's correct.**  
22 Q. Let me show you what we have marked as  
23 Plaintiff's Exhibit 9, which has been several times  
24 identified as the board's policy on school board

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1 Q. Is it your view, as a board member, that the  
2 words "in order to solemnify its proceedings" are the  
3 functional equivalent of the words "in order to seek  
4 God's guidance for the decisions to be made at that  
5 meeting."?  
6 **A. I believe that, yes.**  
7 Q. Okay. And I forgot to say at the beginning  
8 of the deposition, it's really important for the court  
9 reporter, in particular, that we don't trample on each  
10 other's questions and answers. It's the way we all  
11 have conversations, but we need to have a specialized  
12 sequential conversation in the depositions. Okay?  
13 **A. I understand.**  
14 MR. ALLINGHAM: So could I have the  
15 last question and answer read back?  
16 (The reporter read back the last  
17 question and answer.)  
18 BY MR. ALLINGHAM:  
19 Q. Okay. So that at least at, for your  
20 understanding as a board member of the Policy BDA.1  
21 which we have in front of us, it doesn't matter  
22 whether the policy says, "In order to solemnify its  
23 proceedings" or whether the policy says, "in order to  
24 seek God's guidance, will, protection and grace," the

11 (Pages 38 to 41)



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1 meaning would be the same?  
2 **A. Yes, to me it would.**  
3 Q. Okay. Did anyone suggest at anytime in the  
4 consideration of this policy that the policy ought to  
5 say, "in order to seek God's guidance, will,  
6 protection and grace."?  
7 **A. I don't remember.**  
8 Q. Do you remember any discussion at all of the  
9 purpose articulated in the board prayer policy, that  
10 is, quote, "in order to solemnify its proceedings."?  
11 **A. Would you repeat that, please?**  
12 Q. Yes, do you remember anyone discussing the  
13 purpose of the policy at anytime during the board  
14 meetings?  
15 **A. I don't recall, no, I don't recall.**  
16 Q. Let's make my question a little more  
17 specific. Do you recall anyone offering any comment  
18 whatsoever on the language, "in order to solemnify its  
19 proceedings"?  
20 **A. I don't recall.**  
21 Q. When did the board first, first begin to  
22 consider the issue of school board prayer?  
23 **A. When it began to first consider it? It would**  
24 **have been sometime in the summer of 2004.**

1 the June 15, 2004 school board meeting at North  
2 Georgetown Elementary School in the cafeteria?  
3 **A. Yes.**  
4 Q. Now, this would have been the first board  
5 meeting after the 2004 graduation; is that right?  
6 **A. That's correct.**  
7 Q. If you will turn to page two of the minutes,  
8 you will see under the public comments section that  
9 one person made a public comment, and that's  
10 Mrs. Dobrich; is that right?  
11 **A. Yes, I see that.**  
12 Q. And what the minutes record is that  
13 "Mrs. Dobrich, a parent of the Jewish faith, expressed  
14 concern about prayers at the school district events.  
15 She asked that the board consider using a  
16 nondenominational prayer that would be appropriate for  
17 all faiths at events such as graduations, etcetera."  
18 Do you see that?  
19 **A. Yes, I do.**  
20 Q. Do you recall Mrs. Dobrich making that  
21 comment?  
22 **A. I recall Mrs. Dobrich being there, but I**  
23 **can't recall her specific statement, but I assume the**  
24 **board minutes would record such.**

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1 Q. And what prompted the board's consideration  
2 of that issue was Mrs. Dobrich's expression of  
3 concerns that began with the graduation prayer in  
4 early summer of 2004; correct?  
5 **A. Yes.**  
6 Q. Okay. Let me show you what we have marked as  
7 PX15. When I say PX, it's short for plaintiff's  
8 exhibit.  
9 **A. Okay.**  
10 Q. When we do that, that enables someone looking  
11 at the transcript to be able to reconstruct what  
12 document we were looking at.  
13 If you look at the last page of PX15, you  
14 will see Mrs. Hobbs' signature. Actually, it's a  
15 signature stamp, but it's meant to be Mrs. Hobbs'  
16 signature; correct?  
17 **A. Yes.**  
18 Q. And does that tell you that these are the  
19 final minutes of the June 15, 2004 board meeting?  
20 **A. Yes.**  
21 Q. All right. You are recorded as being present  
22 under roll call on the first page?  
23 **A. Yes, I am.**  
24 Q. And do you recall that you were present at

1 Q. Well, that gives rise to some general  
2 questions. The board minutes are not intended to  
3 provide an exact quotation of what someone says at the  
4 board meeting, are they?  
5 **A. An exact quotation?**  
6 Q. Yes, sir.  
7 **A. No, it's not an exact quotation.**  
8 Q. They are intended to be an accurate summary;  
9 is that fair?  
10 **A. Yes.**  
11 Q. Okay. Do you have any reason to think that  
12 this is not an accurate summary of what Mrs. Dobrich  
13 said?  
14 **A. No, I have no reason.**  
15 Q. When you vote to approve minutes that reflect  
16 a statement such as Mrs. Dobrich's statement, what do  
17 you do to ensure that the summary of what is said is  
18 a fair summary?  
19 **A. What do I do?**  
20 Q. Yes.  
21 **A. I really don't do anything. I accept it. If**  
22 **I see something that's blatantly wrong, I would point**  
23 **it out.**  
24 Q. So that you make the assumption that the

12 (Pages 42 to 45)



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1 secretary's summary of what is said during the public  
2 comment session, for example, is a fair summary?  
3 **A. Yes.**  
4 Q. You don't take notes of such things, do you?  
5 **A. No, I do not.**  
6 Q. Am I right that you do not take notes at  
7 board meetings or did not?  
8 **A. Did not, that's correct.**  
9 Q. Okay. While I am on that topic, do you have  
10 any files relating to your service as an Indian River  
11 School Board member?  
12 **A. I have some board packets still, yes.**  
13 Q. And are they -- This has to do with  
14 production of document issues. Do they contain any  
15 notations that you made, or are they clean copies of  
16 the board packets?  
17 **A. They are clean copies.**  
18 Q. Why do you keep them?  
19 **A. Well, I keep them until I get a chance to go**  
20 **through them and throw them away, to be honest. I**  
21 **have done so with some, but I still have some I**  
22 **haven't gone through.**  
23 Q. What prompts that sort of review of what's in  
24 your files, just space issues? When you run out of

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1 space you just start --  
2 **A. Well, I have got things stacked in the closet**  
3 **and I have got things stacked in boxes. Yes, just a**  
4 **space issue and a time issue.**  
5 Q. Without reference to the specific words that  
6 Mrs. Dobrich said, do you recall that Mrs. Dobrich  
7 asked that the board consider using a  
8 nondenominational prayer for its meetings and its  
9 events?  
10 **A. Yes, I do recall that, yes.**  
11 Q. And did you have any understanding of why  
12 Mrs. Dobrich, a parent of the Jewish faith, would ask  
13 the board to consider that?  
14 **A. Ask that, I'm sorry, first part of the**  
15 **question.**  
16 Q. Did you have any understand, being yourself,  
17 personally, as to why Mrs. Dobrich, a parent of the  
18 Jewish faith, would ask the board to consider using  
19 nondenominational prayers that would be appropriate  
20 for all faiths?  
21 **A. Yes, I -- Yes.**  
22 Q. What was your understanding?  
23 **A. What my understanding is the Jewish faith**  
24 **does not believe that Jesus Christ, the Messiah, has**

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1 **come.**  
2 Q. And am I right, then, in understanding that  
3 you thought that Mrs. Dobrich was asking the board to  
4 offer a prayer that would not be inconsistent with her  
5 faith?  
6 **A. Repeat that, please.**  
7 Q. Yes. Did you think Mrs. Dobrich was asking  
8 the board to consider using a prayer that was not  
9 inconsistent with her faith?  
10 **A. Yes.**  
11 MR. ALLINGHAM: Mr. Evans, each  
12 hour -- The tapes are one hour long. Each  
13 hour we have to stop and change the tape.  
14 The time has come.  
15 THE WITNESS: Okay.  
16 VIDEOGRAPHER: Going off the record at  
17 10:11 a.m..  
18 (A recess was taken.)  
19 VIDEOGRAPHER: Going back on the  
20 record at 10:17 a.m..  
21 BY MR. ALLINGHAM:  
22 Q. Mr. Evans, did you know before Mrs. Dobrich  
23 got up to speak during the public comment session on  
24 June 15, 2004 that the issue of prayer at school

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1 district events would be addressed at that June 15  
2 meeting?  
3 **A. I don't recall that, but I do recall that a**  
4 **parent had concern about the graduation prayer.**  
5 Q. So that before June 15 you had spoken to  
6 someone about this concern.  
7 **A. Yes.**  
8 Q. And was that someone Mrs. Hobbs?  
9 **A. No.**  
10 Q. Who was it?  
11 **A. Mr. Walls.**  
12 Q. What did he tell you?  
13 **A. His only words were there was a parent who**  
14 **had a concern, a Jewish parent who had a concern about**  
15 **the prayer that was given at graduation.**  
16 Q. Did you ask Mr. Walls what the concern was?  
17 **A. No.**  
18 Q. Were you at the graduation ceremony?  
19 **A. Yes.**  
20 Q. Did you find the prayer that was given at the  
21 graduation ceremony objectionable?  
22 **A. No.**  
23 Q. Did you have an understanding of why a parent  
24 might have a concern about the prayer that was given

13 (Pages 46 to 49)

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1 at the graduation ceremony in 2004?  
2 **A. A parent? A parent?**  
3 Q. Yes.  
4 **A. Yes, I could understand that.**  
5 Q. What was your understanding of why a parent  
6 might object to that prayer?  
7 **A. Well, I can understand that any parent that**  
8 **didn't believe a particular religion might be**  
9 **concerned.**  
10 Q. You testified that Mr. Walls identified the  
11 parent as a Jewish parent?  
12 **A. I believe so. I believe that he did.**  
13 Q. Did you ask him why he identified the parent  
14 as a Jewish parent?  
15 **A. No.**  
16 Q. I will represent to you that Mrs. Dobrich,  
17 during the June 15, 2004 public comment session, asked  
18 the board that prayers not be offered in the name of  
19 Jesus at school events. Do you recall that?  
20 **A. What date was that?**  
21 Q. That's the June 15, 2004 meeting.  
22 **A. Yes, I recall -- I don't recall that she said**  
23 **Jesus, but she did make some comment.**  
24 Q. Yes, sir, my question was specific to that.

1 you recall what your reaction was at the board  
2 meeting?  
3 **A. My reaction? I don't recall having any**  
4 **specific reaction.**  
5 Q. I want to be sure I am clear. So this is at  
6 the June 15 board meeting. You do not, as you sit  
7 here today, recall what your reaction was; correct?  
8 **A. That's correct. If you could elaborate on**  
9 **what you mean by my reaction.**  
10 Q. Sure.  
11 **A. You mean verbal or expression or?**  
12 Q. Do you recall making a comment out loud at  
13 the conclusion of Mrs. Dobrich's remarks?  
14 **A. No, I don't.**  
15 Q. Do you recall making any externally  
16 discernible reaction, anything that could be observed  
17 by someone else?  
18 **A. Only looking directly at her.**  
19 Q. Do you recall what your internal reaction was  
20 to Mrs. Dobrich's remarks?  
21 **A. Of course, my internal reaction would be that**  
22 **I don't disagree with -- I mean I don't agree with**  
23 **what she is asking.**  
24 Q. Do you recall looking directly at

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1 Do you recall that she said or requested that the  
2 board consider using prayers that did not, were not  
3 offered in the name of Jesus?  
4 **A. I don't recall the specifics of her comment.**  
5 Q. Whether it's at June 15 or some other  
6 meeting, do you recall that Mrs. Dobrich asked the  
7 board to consider using prayers that were not offered  
8 in the name of Jesus?  
9 **A. Repeat that, please.**  
10 Q. I am just expanding the time period.  
11 Mrs. Dobrich spoke more than once before the school  
12 board; correct?  
13 **A. Correct.**  
14 Q. At anytime during Mrs. Dobrich's comments, do  
15 you recall that she said or that she asked the board  
16 to consider using prayers that were not offered in the  
17 name of Jesus?  
18 **A. I have to answer that I am not sure. I don't**  
19 **know whether she said in Jesus's name or**  
20 **non-sectarian. I don't remember specifically.**  
21 Q. Whether it was a request not to use prayers  
22 that were offered in Jesus's name or whether it was  
23 more general nondenominational or non-sectarian or, as  
24 the minutes reflect, "appropriate for all faiths," do

1 Mrs. Dobrich and mouthing the words, "No, never." Not  
2 saying them out loud, but saying "No, never," with  
3 your lips?  
4 **A. No, I don't.**  
5 Q. Do you recall not doing that?  
6 **A. No, I don't.**  
7 Q. That is, do you have an affirmative memory  
8 that you did not do that?  
9 **A. No, I don't have any memory of what I did or**  
10 **didn't do.**  
11 Q. Now, you said that you did not agree with  
12 Mrs. Dobrich's suggestion that the board use a  
13 nondenominational prayer that would be appropriate for  
14 all faiths. Would you tell me why you did not agree  
15 with that?  
16 **A. Well, I don't agree with it. I can't**  
17 **speak -- I am not speaking for the board. I am**  
18 **speaking for myself.**  
19 Q. Well --  
20 **A. I can't agree with anyone that tells me how I**  
21 **should pray.**  
22 Q. All right, and I want to separate your  
23 reaction as an individual and a person of faith with  
24 your reaction as a board member. They may be the

14 (Pages 50 to 53)

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1 same, but I just want to make sure I understand. As a  
2 board member, did you disagree with what Mrs. Dobrich  
3 was suggesting?  
4 **A. No, I did not disagree with her asking the**  
5 **board to consider it.**  
6 Q. As a board member, after consideration of  
7 that issue, I take it that you disagreed with that  
8 suggestion; correct?  
9 **A. With Mrs. Dobrich's suggestion?**  
10 Q. Yes, ma'am, yes, sir, it's Dobrich, but yes,  
11 with Mrs. Dobrich's suggestion.  
12 **A. Dobrich. Did I disagree with her suggestion?**  
13 Q. Yes.  
14 **A. Now, are you asking, is this -- It's hard**  
15 **to -- Well, ask me the question again, please.**  
16 Q. Sure. Mrs. Dobrich suggested that the board  
17 offer prayers not in Jesus's name. Okay, as a board  
18 member, did you disagree with Mrs. Dobrich on that  
19 point?  
20 **A. I can't answer that with a yes or no. If I**  
21 **am asked, if the board chose to not use the name of**  
22 **Jesus, then I would adhere to that, but I would**  
23 **request that I not be asked to pray.**  
24 Q. And is that -- I may have this wrong, but I

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1 have heard some testimony on this issue. Is that  
2 because, Mr. Evans, according to your beliefs,  
3 if you are asked to pray, you should offer the prayer  
4 in the name of Jesus?  
5 **A. That's correct.**  
6 Q. Okay. And, to expand on that a little bit,  
7 is it also your belief that if you pray without  
8 offering the prayer in the name of Jesus, you would be  
9 denying Jesus?  
10 **A. I believe that, yes.**  
11 Q. Yes, sir. But, as you said earlier, you  
12 could accept a board policy that said no prayer should  
13 be offered in the name of Jesus by simply declining  
14 the invitation to pray?  
15 **A. Repeat that, please.**  
16 Q. You articulated a way that you could comply  
17 with the board policy that says no prayers shall be  
18 offered in the name of Jesus by simply declining the  
19 invitation to pray?  
20 **A. If there was such a policy, I could accept**  
21 **it, but I would decline to pray.**  
22 Q. And am I correct, sir, that in that  
23 circumstance, in order to seek divine guidance for  
24 yourself, according to your own faith, you would pray

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1 silently for divine guidance in Jesus's name; correct?  
2 **A. I very possibly would.**  
3 Q. It's certainly a way in which you could,  
4 according to your faith, effectively seek divine  
5 guidance?  
6 **A. That's right, yes.**  
7 Q. Because, according to your faith, God hears  
8 our prayers whether they are offered out loud or  
9 silently?  
10 **A. That's correct.**  
11 Q. And whether they are offered in public or in  
12 private?  
13 **A. That's correct.**  
14 Q. In church or in a supermarket?  
15 **A. That's correct.**  
16 Q. Okay.  
17 **A. That's what I believe.**  
18 Q. In light of what you have just told me, is it  
19 necessary for the board to pray in public at a board  
20 meeting in order for it to accomplish its purpose of  
21 solemnizing the proceedings, which you have told me  
22 means to seek divine guidance?  
23 **A. You asked is it necessary?**  
24 Q. Correct.

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1 **A. No, no, it's not necessary.**  
2 Q. On the other hand, is it, am I right in  
3 understanding that you think it's a, it's desirable to  
4 do so in public rather than in private, or doesn't it  
5 matter?  
6 **A. To me, it doesn't really matter.**  
7 Q. Now, you said a few minutes ago that one  
8 reason that you disagreed with Mrs. Dobrich was that  
9 you don't agree with anyone telling you how you can  
10 pray; is that correct?  
11 **A. That's correct.**  
12 Q. Would you agree with me that your right to  
13 pray however you like -- Well, let me ask the question  
14 differently. Do you understand your right to pray in  
15 whatever way you choose to be an unlimited right?  
16 **A. Yes, I believe it is an unlimited right.**  
17 Q. And is it then correct that you think it is  
18 improper or inappropriate for anyone to impose any  
19 limitations on any other United States citizens' right  
20 to pray however they like?  
21 **A. Repeat that, please.**  
22 Q. Would it then be true that you view it as  
23 inappropriate for anyone to seek to impose any  
24 limitation on the right of any U.S. citizen to pray

15 (Pages 54 to 57)



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1 however they like?  
2 **A. Yes, I believe that.**  
3 Q. All right. In approving the board prayer  
4 policy, did you understand that you were imposing  
5 certain limits on how board members could offer  
6 prayers at school board meetings?  
7 **A. No, I did not believe that I was imposing**  
8 **limits on any school board member as to how they**  
9 **should pray.**  
10 Q. If you look at Plaintiff's Exhibit 9, I know  
11 that you have read it, but let me just read paragraph  
12 three again.  
13 Paragraph three reads, "Such opportunity,"  
14 and that means the opportunity to offer up prayers; is  
15 that right?  
16 **A. Yes, I believe so.**  
17 Q. "Such opportunity shall not be used or  
18 exploited to proselytize, advance, or convert anyone  
19 or to derogate or otherwise disparage any particular  
20 faith or belief."  
21 Do you see that?  
22 **A. Yes, I do.**  
23 Q. Would you agree with me that paragraph three  
24 imposes certain limitations on the content of the

1 **I don't believe that I have that right when I**  
2 **pray, and I don't do that. I have never done that.**  
3 Q. That's what you understood proselytize to  
4 mean?  
5 **A. Yes.**  
6 Q. All right. Do you understand that paragraph  
7 three of the policy prohibits board members from  
8 offering prayers that proselytize, as you have just  
9 defined it?  
10 **A. I believe that, yes, I believe it does.**  
11 Q. Okay, so the policy does impose certain  
12 limitations on the content of the prayers that can be  
13 offered by board members at board meetings; correct?  
14 **A. Yes.**  
15 Q. Okay. And, similarly, the policy prohibits  
16 prayers that seek to advance or convert anyone;  
17 correct?  
18 **A. Correct.**  
19 Q. And the policy prohibits prayers that  
20 derogate or otherwise disparage any particular faith  
21 or belief; correct?  
22 **A. Yes.**  
23 Q. Okay. So, according to your understanding as  
24 a board member, if a board member offered a prayer in

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1 prayers to be offered by board members at board  
2 meetings?  
3 **A. No, I don't see it that way.**  
4 Q. Under the board policy, do you think board  
5 members are free to offer a prayer that proselytizes  
6 for a particular faith?  
7 **A. Repeat that again, please.**  
8 Q. Yes, under the board policy do you think that  
9 board members are free to offer a prayer that  
10 proselytizes for a particular faith?  
11 **A. Can you define what you mean, what you mean**  
12 **by proselytize?**  
13 Q. No, sir. It's your policy. In fact, let me  
14 ask a backup question. When you voted on October 19,  
15 2004 to adopt this policy as a board member, --  
16 **A. Right.**  
17 Q. -- what did you understand proselytize to  
18 mean in that paragraph?  
19 **A. Well, to me, that means that when I pray, or**  
20 **anyone prays, but I am using myself as an example, --**  
21 Q. Yes, sir?  
22 **A. -- that I would not say, "You need to be born**  
23 **again, I am praying for you that God will touch you**  
24 **and give you eternal life."**

1 which the board member said, "Please, God, touch each  
2 of the board members with your guidance during their  
3 decision-making process at the meeting tonight," would  
4 that prayer be permitted or prohibited by paragraph  
5 three?  
6 **A. Well, I think it would be permitted.**  
7 Q. But if the board member, the same board  
8 member offered a prayer that said, "Please, God, touch  
9 each board member with your salvation during the board  
10 meeting today," that would be prohibited?  
11 **A. I believe so, yes.**  
12 Q. All right. So a prayer for guidance is  
13 alright, but a prayer for salvation is prohibited?  
14 **A. Yes, I agree with that.**  
15 Q. How about this prayer? "Oh, Lord, imbue us  
16 with the faith to know and serve you during our  
17 decisions at this meeting."  
18 **A. "Dear Lord."?**  
19 Q. "Imbue us with the faith to know and serve  
20 you."  
21 **A. "To know you and to serve you?" I don't**  
22 **think that's appropriate.**  
23 Q. I am going to ask you later in the  
24 deposition, Mr. Evans, about some other prayers,

16 (Pages 58 to 61)



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1 as well, but I would like to ask you right now, as a  
2 board member, how did you understand that paragraph  
3 three would be enforced, the limitations in paragraph  
4 three would be enforced?  
5 **A. How I understood it would be enforced?**  
6 Q. Yes, sir.  
7 **A. I don't know. I don't know how they would be**  
8 **enforced.**  
9 Q. Is it correct that the board is ultimately  
10 responsible for the enforcement of its policies?  
11 **A. Yes.**  
12 Q. In the course of your consideration of Board  
13 Policy BDA.1, did you give any consideration to how  
14 this policy would be enforced?  
15 **A. I did not, no.**  
16 Q. In the course of your consideration of Board  
17 Policy BDA.1, did you hear anybody give consideration  
18 as to the issue of how Board Policy BDA.1 would be  
19 enforced?  
20 **A. I don't recall hearing anyone say, no.**  
21 Q. Mr. Evans, the perception of whether a prayer  
22 is proselytizing or not, do you think that the  
23 decision about that -- And you and I went through a  
24 few prayers in which I kept changing the content of it

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1 non-proselytizing which a Jewish person might view as  
2 proselytizing, same prayer; correct?  
3 **A. That's very possible, yes.**  
4 Q. And the difference might be grounded in the  
5 faith of those two persons?  
6 **A. Well, I will use your words, yes, it might.**  
7 Q. It's certainly not unreasonable to think that  
8 it might be affected by that faith; isn't that true?  
9 **A. That's true.**  
10 Q. The persons making the judgment whether a  
11 prayer is proselytizing or not in the Indian River  
12 School District, that is the individual board members,  
13 have been at all times since the adoption of this  
14 policy Christian in faith; is that correct?  
15 **A. Repeat that, please.**  
16 Q. First, the persons ultimately responsible for  
17 enforcing paragraph three of the board policy are the  
18 board members; is that correct?  
19 **A. That's correct.**  
20 Q. And is it correct that at all times since  
21 October 19, 2004 when this policy was adopted, every  
22 board member has been of the Christian faith?  
23 **A. I don't know that.**  
24 Q. Do you have any reason to doubt that?

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1 a little bit to see whether you would view it as  
2 violative or permitted by paragraph three.  
3 **A. Uh-huh.**  
4 Q. In the course of deciding whether a prayer is  
5 proselytizing or not, do you think that decision could  
6 be affected by the individual faith of the person  
7 making the decision?  
8 **A. Repeat that, please.**  
9 Q. Yeah, let me give you an example, and then I  
10 will come back to a general question. Okay? I asked  
11 you about some prayers that were at least intended to  
12 be, and I think you heard them to be, Christian  
13 prayers; correct?  
14 **A. Right.**  
15 Q. Do you think that the judgment of whether  
16 those prayers are proselytizing or not might be  
17 affected by whether the person making that decision  
18 was Christian or Jewish or Muslim?  
19 **A. Yes, I believe it would be affected. You**  
20 **can't separate the two.**  
21 Q. So that a Christian might be more tolerant of  
22 a -- Strike that. I am going to use the language of  
23 the policy.  
24 A Christian might view a prayer as

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1 **A. I have no reason to doubt that, no, but I**  
2 **don't know that. I don't know what the faith of some**  
3 **of the board members are.**  
4 Q. Do you attend church with any of the board  
5 members?  
6 **A. No.**  
7 Q. On the other hand, you do know the faith of  
8 some of your fellow board members; correct?  
9 **A. Yes.**  
10 Q. And how do you know that?  
11 **A. Well, because they have, I have talked to**  
12 **them and they have told me. I know that from speaking**  
13 **to them.**  
14 Q. Identify the board members whose faith you do  
15 know?  
16 **A. Well, I do know Reggie Helms claims to be a**  
17 **Christian; Nina Lou Bunting claims to be a Christian;**  
18 **Donald Hattier claims to be a Christian. He is -- I**  
19 **don't ever recall him ending a prayer in Jesus's name,**  
20 **but he has prayed. Mark Isaacs, I don't know his**  
21 **belief, but he had silent prayer once.**  
22 **So it's not just those of us who claim to be**  
23 **Christians that have prayed since this policy took**  
24 **effect.**

17 (Pages 62 to 65)

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1 Q. That wasn't my question, sir. I just asked  
2 you if you could identify the board members whose  
3 faith you know. And you have told me Mr. Helms,  
4 Mrs. Bunting, Nina Lou Bunting, and I guess you said  
5 you didn't know Mr., Dr. Isaacs' faith; correct?  
6 **A. No, I don't.**  
7 Q. So the two board members that you do know  
8 their faith is Mr. Helms and Ms. Bunting?  
9 **A. Yes.**  
10 Q. Anybody else?  
11 **A. The only other one would be Donna Mitchell.**  
12 Q. Who is also a Christian?  
13 **A. Claims to be a Christian, yes.**  
14 Q. Now, you have used the term "claims to be a  
15 Christian." Do you use that phrase just because  
16 there is no way to know for sure what someone's faith  
17 is?  
18 **A. Well, I use that term because I don't know.**  
19 **I only know what they tell me and what I see.**  
20 Q. Okay, so when you say "claims to be a  
21 Christian," you mean in effect professes to be a  
22 Christian?  
23 **A. Professes, that might be a better word, yes.**  
24 Q. You are not doubting that their faith is

1 with information regarding school prayer from  
2 Mr. Griffin. She apologized for its lateness. It was  
3 moved by Mr. Helms, seconded by Mr. Cohee, to table  
4 this item until the next regular board meeting. The  
5 motion passed unanimously."  
6 Am I correct that there was no public  
7 discussion of the school board prayer or school prayer  
8 issue at the June 15 meeting among the board members?  
9 **A. I believe that's correct.**  
10 Q. Okay. Now, it then reads, "Dr. Hattier left  
11 the meeting from 8:30 to 8:45 p.m." Do you see that?  
12 **A. Yes.**  
13 Q. Do you recall that Mrs. Dobrich left at that  
14 point and Dr. Hattier left immediately following her?  
15 **A. No.**  
16 Q. You do not?  
17 **A. I do not.**  
18 Q. Did you ever learn that Dr. Hattier left the  
19 meeting to speak to Mrs. Dobrich outside of the  
20 meeting?  
21 **A. Yes.**  
22 Q. How did you learn that?  
23 **A. Well, he told us.**  
24 Q. What did he tell you?

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1 genuine?  
2 **A. No, no, I am not.**  
3 Q. To turn the question around, you are not  
4 aware of anyone on the school board since October 19,  
5 2004 who is not a Christian; is that correct? No one  
6 has ever professed a faith other than the Christian  
7 faith?  
8 **A. No.**  
9 Q. No, they have not?  
10 **A. Well, no, they have not.**  
11 Q. Yes, that's -- Sometimes --  
12 **A. Not that I am aware of. They have never**  
13 **professed it to me.**  
14 Q. And during your entire decade of service on  
15 the school board, is it correct that no person on the  
16 board has ever professed a faith to you other than  
17 Christianity?  
18 **A. That's correct.**  
19 Q. Look at page three of PX15, which is the  
20 June 15 minutes. There is a section about halfway  
21 down the page that is headed "graduation ceremonies."  
22 Do you see that?  
23 **A. Yes, I do.**  
24 Q. And it reads, "Ms. Hobbs provided the board

1 **A. He told us that he spoke to Mrs. Dobrich.**  
2 Q. Dobrich.  
3 **A. Dobrich, excuse me.**  
4 Q. And what did he tell you he said?  
5 **A. I really don't recall. I don't remember what**  
6 **he said.**  
7 Q. When did Dr. Hattier inform -- This was at  
8 another board meeting that he informed the members  
9 about his conversation with Mrs. Dobrich?  
10 **A. I don't know. It may have been. It may have**  
11 **been at this meeting. It may have been at another**  
12 **meeting.**  
13 Q. At any rate, it was at a board meeting?  
14 **A. Yes.**  
15 Q. Okay. Did Dr. Hattier tell the board members  
16 that he had proposed to Mrs. Dobrich a compromise in  
17 which the district would keep Jesus, the name of Jesus  
18 out of graduation prayers but would allow the use of  
19 God in graduation prayers?  
20 **A. I don't know. He may have. I don't know.**  
21 Q. You have no memory one way or another?  
22 **A. No, I don't.**  
23 Q. Did Dr. Hattier tell the board members that  
24 he had offered Mrs. Dobrich, had offered to provide

18 (Pages 66 to 69)

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1 Mrs. Dobrich a copy of the legal opinion provided to  
2 the school board by the district's lawyer?  
3 **A. Are you asking me if I was aware of that?**  
4 Q. No, I am asking you did you recall he told  
5 you that?  
6 **A. No, I don't.**  
7 Q. Were you aware that Dr. Hattier offered  
8 Mrs. Dobrich the opportunity to review a legal opinion  
9 provided to the school board by the district's  
10 lawyers?  
11 **A. No, I was not aware of that.**  
12 Q. Among the materials provided to the board at  
13 the June 15 meeting -- Well, let me be more general.  
14 On page three again of the minutes, under graduation  
15 ceremonies, it says, "Mrs. Hobbs provided the board  
16 with information regarding school prayer from  
17 Mr. Griffin." Do you see that?  
18 **A. Yes.**  
19 Q. What was that information? What was that  
20 material?  
21 **A. I am not sure, but I know it was a reference**  
22 **to school prayer. I haven't read it since then, so I**  
23 **really don't know.**  
24 Q. Did you read it at that time?

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1 **A. Yes.**  
2 Q. And when you say it was a reference to school  
3 prayer, did it have to do with school prayer or school  
4 board prayer or both?  
5 **A. It may have been both. I don't recall.**  
6 Q. Did you know that Mrs. Hobbs had asked  
7 Mr. Griffin for information regarding school prayer?  
8 **A. Yes.**  
9 Q. How did you learn that?  
10 **A. Well, the board directed her to do so.**  
11 Q. When did the board do that?  
12 **A. Well, I don't recall. I am assuming it was**  
13 **prior to this meeting.**  
14 Q. How do you know that the board directed  
15 Mrs. Hobbs to do that?  
16 **A. Well, she wouldn't have done it without the**  
17 **board's consent.**  
18 Q. Alright. The graduation in 2004 took place  
19 in early June. Do you recall that?  
20 **A. Yes.**  
21 Q. Alright. This was the first meeting  
22 following that graduation ceremony. You understand  
23 that; correct?  
24 **A. Yes.**

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1 Q. Alright. When did the board have the  
2 opportunity to direct Mrs. Hobbs to ask Mr. Griffin  
3 for information regarding school prayer?  
4 **A. I don't know. I can't answer that.**  
5 Q. Does the board from time to time give  
6 direction to the district or the superintendent  
7 outside of its regular board meetings?  
8 **A. Outside of its regular board meetings?**  
9 Q. Yes.  
10 **A. Well, the president has that authority.**  
11 Q. Alright. Is it your belief that the  
12 president, Mr. Walls, directed Mrs. Hobbs to get that  
13 information from Mr. Griffin?  
14 **A. I don't know that he did. I don't know. He**  
15 **may have.**  
16 Q. Alright. The reason for your testimony that  
17 the board had directed Mrs. Hobbs to get that  
18 information is simply that she wouldn't have done it  
19 if you hadn't told her to do so?  
20 **A. I don't believe she would have done it on her**  
21 **own. It may have been a direction of the board or**  
22 **Mr. Walls.**  
23 Q. Okay. If you look at page seven of the  
24 minutes, under the heading Bradley Layfield. Do you

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1 see that heading?  
2 **A. Yes.**  
3 Q. Do you know Mr. Layfield?  
4 **A. Yes, I do.**  
5 Q. Who is Mr. Layfield?  
6 **A. Mr. Layfield is a teacher and athletic**  
7 **director of Sussex Central High School.**  
8 Q. Mr. Layfield was asked to speak on the issue  
9 of what sod and what irrigation system would be used  
10 at the high schools; is that correct?  
11 **A. Yes, I believe so.**  
12 Q. And then Mr. Layfield volunteered on his own  
13 the substance of the final sentence under his heading.  
14 It says, quote, "He mentioned that when he delivers a  
15 prayer and uses the name 'Jesus Christ,' he intends it  
16 to be for all faiths." Do you see that.  
17 **A. Yes, I do.**  
18 Q. Did that strike you as a non-sequitur in the  
19 context of his discussion of sod?  
20 **A. Did it -- Say that again. Did it strike me**  
21 **as?**  
22 Q. As a non-sequitur in the context of his  
23 discussion of sod and irrigation systems?  
24 **A. Well, that definitely is not non-sequitur.**

19 (Pages 70 to 73)



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1 Q. Oh, I'm sorry, I used a -- Did it strike you  
2 as odd that Mr. Layfield volunteered his opinion about  
3 prayer?  
4 **A. Yes, it did, absolutely.**  
5 Q. That kind of a comment would be more  
6 appropriate for the public comment session; isn't that  
7 right?  
8 **A. I believe it would be, yes.**  
9 Q. Did you have any idea how Mr. Layfield  
10 thought that the use of the name Jesus Christ in a  
11 prayer would be appropriate for all faiths?  
12 **A. I have no idea how he thought that.**  
13 Q. We can agree, can't we, that the use of Jesus  
14 Christ in a prayer is not appropriate for persons of  
15 the Muslim or Jewish faith?  
16 **A. Yes, I, yes, I know that, yes.**  
17 Q. Farther down the page, the minutes reflect  
18 that the board went into executive session at 9:40,  
19 and one of the reasons for doing so is to discuss  
20 collective bargaining, pending or potential  
21 litigation. Do you see that?  
22 **A. Yes.**  
23 Q. Is that the heading under which the board  
24 addressed the school prayer issue in executive

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1 **A. Uh-huh, yes, I do.**  
2 Q. The last sentence of that public comment  
3 session says, "Comments were equally made in favor of  
4 continuing and discontinuing the present practice."  
5 Do you see that?  
6 **A. Yes.**  
7 Q. What did you understand the present practice  
8 to be?  
9 **A. I understand that to mean continuing prayer  
10 at school board meetings and at graduation.**  
11 Q. And is your recollection that comments were  
12 equally made in favor of continuing and discontinuing  
13 that practice?  
14 **A. Yes, I believe it was.**  
15 Q. Now, at the June 15 meeting, was Mrs. Dobrich  
16 the only person who spoke during the public comment  
17 session on this issue?  
18 **A. I believe so.**  
19 Q. Now, this was the meeting to which the board  
20 tabled -- At June 15 the board tabled discussion of  
21 board prayer until the next board meeting. Do you  
22 recall that?  
23 **A. I don't recall it, no.**  
24 Q. Well, we went through that in the minutes on

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1 session?  
2 **A. That would be, yes.**  
3 Q. And did the board address the school prayer  
4 session during the executive session on June 15?  
5 **A. I don't remember.**  
6 Q. I am going to show you what we have marked as  
7 PX16. These are the minutes of the board's regular  
8 meeting on July 27, 2004. And, again, if you look at  
9 the last page, you will see Mrs. Hobbs' signature. Is  
10 that her actual signature this time?  
11 **A. It looks like hers, yes.**  
12 Q. And we can confirm, then, these are the final  
13 minutes of this meeting; right?  
14 **A. I believe so.**  
15 Q. Alright. And you will see on the first page  
16 under roll call that you are present at this meeting?  
17 **A. Yes.**  
18 Q. If you look at the second page under public  
19 comments, you will see that there is a listing of  
20 persons who spoke regarding Indian River School  
21 District's practice of holding prayers at  
22 school-sponsored events, including graduation  
23 ceremonies, and then there is a list of people who  
24 spoke. Do you see?

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1 June 15. I can go back to it.  
2 **A. Oh, I remember June 15. You are referring to  
3 June 15 and not July?**  
4 Q. Yes.  
5 **A. Yes.**  
6 Q. The June 15 meeting, the board tabled  
7 discussion until its next meeting?  
8 **A. Yes, I remember reading that.**  
9 Q. This is its next meeting; correct?  
10 **A. Yes.**  
11 Q. Alright, if you look down at the bottom of  
12 page two of the July 27 minutes, you will see under  
13 graduation ceremonies, quote, "It was moved by  
14 Mr. Helms, seconded by Mr. Cohee, to table graduation  
15 ceremonies until after executive session. The motion  
16 passed unanimously."  
17 Do you see that?  
18 **A. Yes, I do.**  
19 Q. Alright, why did the board decide to go into  
20 executive session to talk about this school board  
21 prayer issue?  
22 **A. Well, that was usually the norm whenever we,  
23 whenever there was a possibility of mentioning any  
24 individual's names or positions.**

20 (Pages 74 to 77)



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1 Q. So it was to protect privacy interests of  
2 persons who might be named during the discussion?  
3 **A. Yes.**  
4 Q. And what persons did you think would be named  
5 during the discussion?  
6 **A. Oh, you never know. You never know whose**  
7 **name might be mentioned during an executive session.**  
8 Q. Well, wouldn't that argue for having  
9 executive session discussions of everything, since  
10 somebody's name might get mentioned?  
11 **A. No, not necessarily.**  
12 Q. Alright. It's certainly possible that  
13 Mrs. Dobrich's name might get mentioned; right?  
14 **A. Sure, that's possible, yeah.**  
15 Q. But Mrs. Dobrich had already spoken publicly  
16 twice about this issue. Her privacy interests weren't  
17 served by going into executive session, were they?  
18 **A. Well, I don't know that. I don't know what**  
19 **the discussion was.**  
20 Q. Isn't the executive session, isn't the notion  
21 of privacy interests addressed to district personnel?  
22 You go into executive session --  
23 **A. Yes.**  
24 Q. -- when you are talking about district

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1 personnel.  
2 **A. Yes, we do.**  
3 Q. Not an incidental mention about a member of  
4 the public; correct?  
5 **A. Yes, that's correct.**  
6 Q. Did you think that district personnel would  
7 be mentioned during your discussion of the board  
8 prayer issue?  
9 **A. Quite possibly.**  
10 Q. In what way?  
11 **A. Possibly, as we read -- I don't know what**  
12 **minutes it was. Bradley Layfield could have been one**  
13 **of the individuals on the agenda to talk about. I**  
14 **don't know. I don't remember.**  
15 Q. Do you recall that there was some notion that  
16 there would be discussion of Bradley Layfield during  
17 the July meeting?  
18 **A. No, I don't recall that.**  
19 Q. Do you think that was the reason why you went  
20 into executive session?  
21 **A. No, we always go into -- There is always an**  
22 **executive session during every meeting.**  
23 Q. I understand that. The reason to incorporate  
24 the discussion of graduation ceremonies and school

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1 board prayer in the executive session, was that  
2 because you were afraid you were going to be  
3 discussing Bradley Layfield's views on that issue?  
4 **A. Well, I don't know.**  
5 Q. You don't think so, do you?  
6 **A. I really -- I don't know. I don't know why**  
7 **we went into executive session for that particular**  
8 **item.**  
9 Q. We have had testimony that the reason you  
10 went into executive session was that it was a highly  
11 charged issue. Is that why you went into executive  
12 session?  
13 **A. Well, that may have been. It was a highly**  
14 **charged issue, yes.**  
15 Q. And so you were trying to avoid what by going  
16 into executive session?  
17 **A. I don't know. I don't have any response to**  
18 **that.**  
19 Q. Do you think that the public has a right to  
20 see the deliberations of the school board on its  
21 policies?  
22 **A. Yes.**  
23 Q. Did you think that by going into executive  
24 session you were shielding from the public's view your

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1 discussion of a policy on school board prayer?  
2 **A. Did I think that?**  
3 Q. Yes.  
4 **A. No, no, I didn't.**  
5 Q. In retrospect, do you understand that by  
6 going into executive session you shielded from the  
7 public's view the board's discussion of the school  
8 board prayer policy?  
9 **A. Repeat that, please.**  
10 Q. Do you understand, with the benefit of  
11 hindsight, that by going into executive session in  
12 July 27 you shielded from the public view the board's  
13 discussion of its school board prayer policy?  
14 **A. Yes.**  
15 Q. Fine.  
16 **A. Yes.**  
17 Q. In retrospect, do you wish, as a board  
18 member, that your discussions of that policy had been  
19 in the public view?  
20 **A. In retrospect, it should have been, like**  
21 **other policies are discussed.**  
22 Q. This is on a different topic, but I am on  
23 these minutes, so I am just going to ask it quickly.  
24 On page seven of the minutes. There is virtually a

21 (Pages 78 to 81)

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1 whole page of the minutes devoted to various field  
2 trips by various groups, school groups. Do you see  
3 that?  
4 **A. Yes.**  
5 Q. And is it among the board's responsibilities  
6 to approve field trips by student groups?  
7 **A. Yes, it is.**  
8 Q. And the board frequently does that; isn't  
9 that right?  
10 **A. Yes.**  
11 Q. On page eight, the minutes reflect that you  
12 went into executive session at 10:20 and emerged from  
13 executive session at 12:10 a.m.. I will say  
14 parenthetically that 12:10 a.m. is late and that you  
15 folks worked very hard in your duties as board  
16 members.  
17 That reflects an executive session of an hour  
18 and 50 minutes. And, by definition, executive  
19 sessions are out of the public eye; correct?  
20 **A. Correct.**  
21 Q. When you came back out of executive session,  
22 you will see on page nine at the top that the only  
23 discussion of graduation ceremonies was to refer the  
24 graduation ceremonies matter, which, by the way,

1 Q. I will show you what we have previously  
2 marked as PX13. This is a version of the final  
3 minutes of the August 23 special board meeting. When  
4 I say a version, I mean to refer to the fact that some  
5 portions of the minutes have been masked so that we  
6 can't see them and the word redacted has been stamped  
7 on it to indicate that there has been a portion taken  
8 out.  
9 **A. Yes.**  
10 Q. Okay, and that redaction was done by your  
11 counsel. I don't yet know why.  
12 This is actually, PX13 is the minutes of the  
13 executive session of that special meeting. I would  
14 like to show you now PX14, which is the minutes of the  
15 regular portion of that meeting.  
16 You will see on the second page of the  
17 exhibit that you are listed as present. Does that  
18 indicate to you that you attended the August 23  
19 special meeting?  
20 **A. Yes, that's correct.**  
21 Q. Alright. The meeting was called to order at  
22 7:00 and went into executive session at 7:01. Do you  
23 see that?  
24 **A. Yes, I do.**

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1 includes the school board prayer matter; correct?  
2 Yes? You have to say yes.  
3 **A. You are asking me if it does?**  
4 Q. If the graduation ceremonies matter included  
5 the school board prayer issue?  
6 **A. Well, I don't know that. It may have.**  
7 Q. Do you have any recollection one way or  
8 another?  
9 **A. No, I can't say yes or no if I am not sure.**  
10 **I don't know this says graduation ceremonies. I can't**  
11 **tell you if it included school board prayer or not.**  
12 Q. Okay, so you don't know whether, even as late  
13 as July 27, the board had considered school board  
14 prayer at all?  
15 **A. I believe it did, but I can't, I can't say**  
16 **that it's included in this session.**  
17 Q. Okay, whatever graduation ceremonies refers  
18 to, the only discussion of it in public session after  
19 you came out of executive session was a motion to  
20 refer that issue to the Policy Committee?  
21 **A. I believe so, yes.**  
22 Q. Okay. Now, are you a member, were you a  
23 member of the Policy Committee?  
24 **A. No.**

1 Q. And, as the minutes reflect, and this would  
2 be consistent with your memory, as a special meeting  
3 this meeting was not opened with a prayer; is that  
4 correct?  
5 **A. That's correct.**  
6 Q. And you then came out of executive session at  
7 11:15 and adjourned at 11:16; correct?  
8 **A. Yes.**  
9 Q. Can we agree, sir, that the entirety of this  
10 meeting, except calling it to order and adjourning it,  
11 was held in executive session?  
12 **A. That's correct.**  
13 Q. Alright. And do you recall that the sole  
14 subject of the executive session was the discussion of  
15 the school prayer issue?  
16 **A. Do I recall? It may have been. It's very**  
17 **possible with legal counsel being there.**  
18 Q. When you say legal counsel being there,  
19 that's because Mr. Griffin is shown as being in  
20 attendance on page two of PX14, page two of the  
21 exhibit, Page 1 of the minutes? "Other visitors and  
22 staff in attendance," it reflects James Griffin. Do  
23 you see that?  
24 **A. Yes.**

22 (Pages 82 to 85)

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1 Q. And that's the counsel you are referring to.  
2 **A. Yes.**  
3 Q. Alright, fine. And if you look at the  
4 agenda, which is page one of the exhibit, turn back to  
5 page one, you will see that the only specifically  
6 addressed issue on the agenda is potential or pending  
7 litigation, Number 0501PL. Do you see that?  
8 **A. I see that, yes.**  
9 Q. Do you know what Number 0501PL means?  
10 **A. No.**  
11 Q. Do you know if PL stands for pending  
12 litigation?  
13 **A. I do know that, yes.**  
14 Q. And the 0501 designation refers to the 05,  
15 sorry, the 04-05 school year, and the 01 refers to the  
16 first pending litigation; correct?  
17 **A. Right, I understand that, yes.**  
18 Q. Fine. I will represent to you that others of  
19 your colleagues have identified Number 0501PL as the  
20 possible litigation involving the school prayer issue.  
21 Alright?  
22 **A. Okay.**  
23 Q. Do you have any reason to doubt that?  
24 **A. No, I don't.**

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1 Q. Okay. Now, in the executive session minutes,  
2 the only substantive discussion which remains after  
3 your counsel has redacted this document is down near  
4 the bottom of the page on page one, and it reads,  
5 "During the discussion of this issue, several board  
6 members expressed that their constituents do not want  
7 the board to change its practice of opening the  
8 meetings with a prayer. It was not felt that a  
9 decision could be made this evening regarding whether  
10 or not to change our past practice."  
11 Do you see that?  
12 **A. Yes, I do.**  
13 Q. Alright, and do you have any reason to doubt  
14 that that was discussed?  
15 **A. I have no reason to doubt it at all.**  
16 Q. Do you have a specific recollection that at  
17 this meeting board members expressed the view that  
18 their constituents did not want the board to change  
19 its practice of opening the meetings with a prayer?  
20 **A. I don't recollect any specifics of that**  
21 **meeting.**  
22 Q. Do you recall that board members expressed  
23 that sentiment at some point?  
24 **A. Oh, yes, yes.**

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1 Q. Okay, and which board members; do you know?  
2 **A. No, I don't remember specifically.**  
3 Q. Did you express that sentiment?  
4 **A. I don't know that I did. I may have. I may**  
5 **have.**  
6 Q. Was it your view in the summer of 2004 that  
7 your constituents did not want the board to change its  
8 practice of opening the meetings with a prayer?  
9 **A. Was that my view?**  
10 Q. Yes.  
11 **A. Yes, I believe that they did not want us to**  
12 **change it.**  
13 Q. And when you say they, do you mean a majority  
14 of your constituents or all of your constituents?  
15 **A. A majority or all? You are --**  
16 Q. You said, "I believe they did not want us to  
17 change it."  
18 **A. Well, when I say they, I am referring to the**  
19 **public.**  
20 Q. Okay, all of the public or a majority of the  
21 public?  
22 **A. A majority.**  
23 Q. Okay. Did you have a view as to whether  
24 there was a minority that did want you to change the

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1 practice?  
2 **A. Did I have a -- I knew there were, there was**  
3 **a minority that did want us to change the practice.**  
4 Q. And did it matter to you what the majority  
5 view was, or were you -- In voting for this policy,  
6 were you exercising your own independent judgment?  
7 **A. Well, I think it would have to be a**  
8 **combination of both.**  
9 Q. So, in exercising your independent judgment  
10 as a board member, you do take into account what you  
11 believe a majority of the public want you to do?  
12 **A. Yes.**  
13 Q. How did you form the view that a majority of  
14 the public wanted the board to continue its practice  
15 of opening the meeting with a prayer?  
16 **A. Well, for one, at the August meeting the**  
17 **attendance there and, you know, people that I know at**  
18 **my church.**  
19 Q. Any other way?  
20 **A. No.**  
21 Q. So you are aware that a majority of the  
22 people at your church wanted the board to continue its  
23 practice?  
24 **A. Yes.**

23 (Pages 86 to 89)



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1 Q. How did you learn that a majority of the  
2 congregants at your church wanted the board to  
3 continue its practice?  
4 **A. Well, they would tell me. They would walk up  
5 to me and tell me.**  
6 Q. How many people told you at your church?  
7 **A. Oh, I -- Maybe 20, 25, 30, somewhere in that  
8 range.**  
9 Q. Is that over the course of the entire period  
10 that you were considering the prayer, I mean the  
11 policy?  
12 **A. Yes, I believe so.**  
13 Q. You also mentioned the attendance at the  
14 August 24 board meeting.  
15 **A. Yes.**  
16 Q. Do you know how many people spoke at the  
17 board meeting?  
18 **A. Maybe 20.**  
19 Q. Was there anything else at the board meeting  
20 that suggested to you that the public wanted you to  
21 continue your practice, other than the people who  
22 actually spoke?  
23 **A. Well, just, just the attendance and the  
24 people who spoke. That was pretty much it.**

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1 Q. How about the reaction of the people in the  
2 crowd who didn't speak, did that suggest to you that  
3 the public supported your existing practice of --  
4 **A. The people that didn't speak? I'm sorry.**  
5 Q. Yes, sir, and I know that you are trying to  
6 get clarification, but it's better if we each try not  
7 to interrupt each other.  
8 The people who didn't speak formally at the  
9 podium during the public comment session, did their  
10 behavior or conduct or anything that those people said  
11 while they were not at the podium indicate anything to  
12 you about whether the public supported your existing  
13 practice of opening meetings with a prayer?  
14 **A. Well, those who didn't speak, there was  
15 cheering and signs, people carrying signs and those  
16 cheering that didn't speak.**  
17 Q. And those folks cheered during the comments  
18 that supported the board's practice?  
19 **A. Yes.**  
20 Q. Alright.  
21 **A. Yes.**  
22 Q. And did you hear people say amen during  
23 the --  
24 **A. Yes.**

1 Q. -- statements?  
2 **A. Yes.**  
3 Q. And that was a widespread practice during the  
4 meeting, wasn't it?  
5 **A. Yes.**  
6 Q. And the cheering was loud, wasn't it?  
7 **A. Yes, it was.**  
8 Q. And the signs were many?  
9 **A. Maybe less than a dozen.**  
10 Q. Did you see any signs that expressed the view  
11 that the board should stand up to the ACLU?  
12 **A. I don't recall if there was a specific sign  
13 of that nature.**  
14 Q. And the flip side of the cheering and the  
15 amen that followed public comments supporting the  
16 board's practice was that there was booing during the  
17 comments that supported changing the board's practice;  
18 isn't that right?  
19 **A. I believe there was, yes.**  
20 Q. And some catcalling and jeering?  
21 **A. Yes, there was booing. I can't tell you  
22 about catcalling, because I don't know.**  
23 Q. And the booing was as loud as the cheering,  
24 wasn't it?

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1 **A. Possibly.**  
2 MR. ALLINGHAM: We are going to change  
3 the tape, Mr. Evans.  
4 VIDEOGRAPHER: Going off the record at  
5 11:15 a.m..  
6 (A recess was taken.)  
7 VIDEOGRAPHER: Going back on the  
8 record at 11:25 a.m..  
9 BY MR. ALLINGHAM:  
10 Q. Looking again at PX13, which is the executive  
11 session minutes, the last sentence of the only  
12 substantive portion of these minutes says, quote, "It  
13 was not felt that a decision could be made this  
14 evening regarding whether or not to change our past  
15 practice."  
16 And my question to you, sir, is do you have  
17 any recollection of what it was that the board members  
18 needed in order to be able to make a decision about  
19 whether to change the past practice which you didn't  
20 have as of August 23?  
21 **A. No, but the fact that it was 11:15, it may  
22 have been felt it was a little late to get into that  
23 discussion or further that discussion.**  
24 Q. This is a four-hour and 14 minute executive

24 (Pages 90 to 93)



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1 session which appears to have been directed entirely  
2 to the issue of school prayer, and what I would like  
3 you to do is tell me everything you recall that was  
4 discussed in that four-hour and 14 minute session.

5 MR. SHAU: Object. It's  
6 attorney/client privilege discussions held  
7 at that meeting. I am going to instruct the  
8 witness not to answer.

9 MR. ALLINGHAM: Is your position that  
10 everything that was discussed at that  
11 meeting is protected by the attorney/client  
12 privilege?

13 MR. SHAU: Right, I will limit my  
14 objection to everything that was discussed  
15 regarding the school board prayer issues and  
16 the potential litigation with counsel. If  
17 there were other issues discussed at that  
18 meeting not related to that, then the  
19 witness can answer.

20 MR. ALLINGHAM: Fair enough. I just  
21 wanted to make sure we were on the same  
22 wavelength. If Mr. Griffin offered a legal  
23 opinion to the board, you would take the  
24 position that it's covered by the privilege?

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1 colloquy on is the extent of the protection of  
2 discussions from discovery in this deposition as a  
3 consequence of the fact that it may or may not be  
4 covered by the privilege, so I am going to ask you  
5 some questions. On these questions it's particularly  
6 important to wait until I am done and to give Mr. Shau  
7 a chance to interpose an objection if he wants to.  
8 Okay?

9 **A. Yes.**

10 Q. Did Mr. Griffin provide the board with legal  
11 advice on the issue of school board prayer during this  
12 meeting? Don't tell me what it was. Just tell me  
13 whether he did or not.

14 **A. I am going to have to qualify my statement.**  
15 **I don't know if it was at this meeting. I can't**  
16 **verify that, but yes, he gave us his opinion.**

17 Q. Whether it was at this meeting or another  
18 meeting, did Mr. Griffin provide the board members  
19 with a draft of a school board prayer policy?

20 **A. I believe he did.**

21 Q. And when Mr. Griffin gave his opinion  
22 regarding the issue of school board prayer, was it in  
23 the form of an opinion about the legality of the  
24 policy that he was offering you?

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1 MR. SHAU: Yes.

2 MR. ALLINGHAM: If Mr. Evans discussed  
3 with Dr. Hattier their individual views on  
4 the issues, that would not be covered by the  
5 privilege just because Mr. Griffin was  
6 there; correct?

7 MR. SHAU: I would say if they  
8 discussed it in the forum of a conversation  
9 with their counsel, that, too, would be  
10 privileged.

11 MR. ALLINGHAM: Well, I don't want to  
12 ask an improper question. What do you mean  
13 by "in the forum of a conversation with  
14 their counsel"?

15 MR. SHAU: If Dr. Hattier raised his  
16 view and counsel may have said -- I wasn't  
17 at the meeting, I don't know what  
18 occurred -- may have said, "Well, what's  
19 someone else's view," and somebody else  
20 raised their view, then I think that is  
21 within the confines of the attorney/client  
22 privilege.

23 BY MR. ALLINGHAM:

24 Q. Mr. Evans, what counsel have been having a

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1 **A. Would you repeat that, please?**

2 Q. Yeah, let me see if I can make it a little  
3 clearer.

4 **A. It was a little confusing.**

5 Q. Mr. Griffin gave you some advice. Did it  
6 have to do with the legality of the draft policy that  
7 he had provided to you, or was it more generally on  
8 the issue of school prayer?

9 **A. I don't remember. I honestly don't. He gave**  
10 **us his opinion. I don't remember if it was a draft.**

11 Q. Let me show you what's been marked as PX11.  
12 Take as much time as you want to read that document.  
13 Have you read it?

14 **A. Yes.**

15 Q. Having just recently read Board Policy BDA.1,  
16 do you recognize that the language of the two are,  
17 with some minor modifications, identical?

18 **A. Yes.**

19 Q. Alright. Now I would like to show you PX12.  
20 I am not going to ask you to read the whole document,  
21 but rather I am going to direct your attention to  
22 certain portions of it. The first portion is the  
23 material in brackets at the top left of the first  
24 page, which reads, "For release to the general public,

25 (Pages 94 to 97)

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1 proposed school board prayer resolution dated 8/30/04  
2 prepared by the Rutherford Institute and the Neuberger  
3 firm." Do you see that?  
4 **A. Yes.**  
5 Q. Alright, and do you recall receiving from the  
6 Rutherford Institute or Tom Neuberger a document  
7 having to do with prayer at board meetings?  
8 **A. I believe so.**  
9 Q. Okay.  
10 **A. Yes, I think we did.**  
11 Q. Turn to the next to the last page and you  
12 will see five numbered paragraphs.  
13 **A. Yes.**  
14 Q. And I would like you to read the five  
15 numbered paragraphs. Have you read it?  
16 **A. Yes.**  
17 Q. Can we agree that the text of those five  
18 numbered paragraphs is substantively identical to  
19 Board Policy BDA.1 and with some very minor  
20 modifications to the text of PX11?  
21 **A. Yes.**  
22 Q. And am I correct, then, in inferring that the  
23 text of the board policy as adopted, the text of PX11,  
24 and the text of the numbered paragraphs of PX12,

1 Q. Yes, sorry, PX12.  
2 **A. Would you repeat that, please?**  
3 Q. Yes. You will see that it's dated 8/30/04,  
4 top left.  
5 **A. Yes.**  
6 Q. And that it appears to have been intended for  
7 a first reading in September of 2004.  
8 **A. I see that line.**  
9 Q. Is it your belief that the board at its  
10 executive session on August 23 did not yet have this  
11 document?  
12 **A. It would appear, based on the dates I see on**  
13 **this form.**  
14 Q. Do you have any independent recollection of  
15 whether at the August 23 executive session the board  
16 had this document, PX 12?  
17 **A. I have no recollection, no.**  
18 Q. So your best belief, based on the text of the  
19 document, is that it did not, but you don't have an  
20 independent recollection?  
21 **A. That's correct.**  
22 Q. Okay. Whenever the board got it, do you  
23 recall the board considering the substance of what has  
24 been marked as PX12?

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1 according to your best recollection, were drafted by  
2 either the Rutherford Institute or the Neuberger firm?  
3 **A. It appears that way, yes.**  
4 Q. Did you have a different draft policy that  
5 was, from PX11, PX12 and PX9, that was prepared by  
6 Mr. Griffin?  
7 **A. I don't recall. There may have been.**  
8 Q. I thought you testified earlier that you  
9 thought that Mr. Griffin had provided you with a draft  
10 policy. Is that correct?  
11 **A. He may have, yes. I believe he did.**  
12 Q. Am I correct that you do not believe that the  
13 draft provided to you by Mr. Griffin is any of PX9,  
14 PX11 or PX12?  
15 **A. Repeat that, please.**  
16 Q. The draft Mr. Griffin provided you is not in  
17 front of you right now; isn't that correct?  
18 **A. I don't -- If he did, I don't see it, no.**  
19 Q. Okay. PX11, it says that it's dated 8/30/04  
20 and is prepared, you will see somewhat under that, for  
21 a first reading in September of '04. Do you see that?  
22 **A. I'm sorry, which document are you looking at?**  
23 Q. PX --  
24 **A. Twelve.**

1 **A. Would you repeat that, please?**  
2 Q. Without regard to time, do you recall that as  
3 a board member you reviewed PX12?  
4 **A. I don't recall. I may have.**  
5 Q. Does the document look familiar, that is to  
6 say without having gone through it paragraph by  
7 paragraph, do you recall getting a lengthy document  
8 from the Rutherford Institute and Mr. Neuberger on the  
9 issue of school prayer?  
10 **A. I believe we did. I don't know that it's**  
11 **this document, but I believe we got something from**  
12 **them.**  
13 Q. Look on page two, please. There are some  
14 whereas clauses on page two, and the second one reads,  
15 "The school board has obtained the legal advice of two  
16 competent and experienced constitutional attorneys,  
17 John W. Whitehead, Esquire, and Thomas Neuberger,  
18 Esquire." Do you see that?  
19 **A. Yes, I do.**  
20 Q. And did, in fact, the school board obtain the  
21 legal advice of Mr. Whitehead and Mr. Neuberger?  
22 **A. Of Mr. Whitehead, I am not aware that we did,**  
23 **and Mr. Neuberger, he did attend one meeting.**  
24 Q. And did he give you legal advice during that

26 (Pages 98 to 101)

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1 meeting?  
2 **A. I am not sure. I don't know. He may have.**  
3 Q. Do you know when that meeting took place?  
4 **A. No, I don't remember.**  
5 Q. Am I correct that it was before the board  
6 finally adopted Board Policy BDA.1?  
7 **A. I can't -- I don't know. I can't remember.**  
8 **I can't specifically say when.**  
9 Q. You testified that Mr. Neuberger attended one  
10 board meeting. Do you know who invited Mr. Neuberger  
11 to attend?  
12 **A. It may have been Mr. Helms.**  
13 Q. Does every board member have the authority to  
14 invite lawyers to make presentations to the board?  
15 **A. No, but I don't believe Mr. Helms would have**  
16 **done it without prior consent from the president.**  
17 Q. So your understanding is that Mr. Helms may  
18 have extended the invitation but he was authorized to  
19 do so by the board or its president?  
20 **A. That would be the norm, yes.**  
21 Q. And you have no reason to think that the norm  
22 was deviated from in this instance?  
23 **A. No, I don't.**  
24 Q. During the board meeting at which

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1 Mr. Neuberger was in attendance, was consideration  
2 given by the board to retaining Mr. Neuberger as its  
3 legal counsel?  
4 **A. At the board meeting that he attended? No,**  
5 **we did not.**  
6 Q. Did not retain him or did not consider  
7 retaining him?  
8 **A. We considered, yes.**  
9 Q. And then at that meeting chose not to retain  
10 him?  
11 **A. That's correct.**  
12 Q. Why did the board choose not to retain  
13 Mr. Neuberger?  
14 MR. SHAU: I am going to object on  
15 attorney/client privilege, but, upon your  
16 representation that this testimony has  
17 occurred before, I will allow the witness to  
18 answer your questions. What I mean by that  
19 is previously you told me Jason had allowed  
20 this to go forward.  
21 MR. ALLINGHAM: Yeah, I don't know  
22 that I asked precisely this question, but  
23 there has been some testimony about the  
24 decision-making process on retaining or not

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1 retaining Mr. Neuberger.  
2 THE WITNESS: Would you repeat the  
3 question, please?  
4 BY MR. ALLINGHAM:  
5 Q. Yes, why did the board choose not to retain  
6 Mr. Neuberger?  
7 **A. What I recall of Mr. Neuberger, he wanted to**  
8 **take complete control, and the board would not allow**  
9 **that.**  
10 Q. And so the board made a judgment at that  
11 meeting that it was not going to retain him?  
12 **A. I believe it was at that meeting. It was at**  
13 **a meeting. I believe it was that one.**  
14 Q. At the meeting at which Mr. Neuberger was in  
15 attendance, did he pass out a document that he had  
16 prepared relating to school board prayer? Did he  
17 distribute it to the board members?  
18 **A. He may have, but I don't know what it was. I**  
19 **believe he may have passed out a document. It may**  
20 **have been that.**  
21 Q. May have been PX12 and may not have been?  
22 **A. That's correct. It may have been. I don't**  
23 **recall.**  
24 Q. Do you recall that the ACLU threatened the

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1 board and the school district with a lawsuit if it did  
2 not abandon its custom of opening its meetings with a  
3 prayer?  
4 **A. I believe they threatened a lawsuit. I don't**  
5 **recall whether it was over the graduation policy or**  
6 **school board prayer, but I believe they did threaten**  
7 **to pursue it.**  
8 Q. I want you to take as much time as you need  
9 to answer the questions that I am going to pose to you  
10 now, and that includes, if you want to, reading the  
11 entirety of PX12. But, without reading it in its  
12 entirety, unless you feel the need to, can we agree  
13 that it has lengthy discussions of legal cases?  
14 **A. Yes, it does have a number of legal cases**  
15 **stated.**  
16 Q. Did Mr. Neuberger, during his presentation to  
17 the board, discuss legal cases on school prayer?  
18 **A. He may have. I don't remember if he did or**  
19 **not. He may have.**  
20 Q. Look at page three, please. In the third  
21 full paragraph which begins, "It is the opinion." Are  
22 you with me?  
23 **A. Yes.**  
24 Q. Quote, "It is the opinion of legal counsel

27 (Pages 102 to 105)



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1 that since the Indian River Board of Education is a  
2 public legislative and deliberative body, it has the  
3 right to open its meetings with a prayer." Closed  
4 quote.  
5 Did the Indian River Board of Education  
6 receive such an opinion?  
7 **A. I don't recall if we did, but we believe that**  
8 **we had -- We believe this paragraph. Now, whether it**  
9 **was legal counsel, I don't remember.**  
10 Q. So let me explore that for a minute. Is it  
11 your belief, I am going to start with you, that the  
12 Indian River Board of Education is a public  
13 legislative and deliberative body; correct?  
14 **A. Yes.**  
15 Q. And it is your belief that the board,  
16 therefore, has the right to open its meetings with a  
17 prayer?  
18 **A. Yes, I believe that.**  
19 Q. Right. Do you think you would have linked  
20 the two concepts without advice from counsel, that is  
21 do you think without advice from counsel you would  
22 have said, "Well, the reason we have the right to open  
23 our meetings with a prayer is that we are a public  
24 legislative and deliberative body."?

1 of legal counsel that since the Indian River Board of  
2 Education is a public legislative and deliberative  
3 body, it has the right to open its meetings with a  
4 prayer? Did you take that into account in voting for  
5 the policy?  
6 **A. You are referring to our policy?**  
7 Q. Correct. Yes, I'm sorry, I call it BDA.1,  
8 the board prayer policy.  
9 **A. You will have to repeat that again, please.**  
10 Q. In voting for that policy, did you take into  
11 account an opinion of legal counsel that since the  
12 Indian River Board of Education is a public  
13 legislative and a deliberative body, it has the right  
14 to open its meetings with a prayer?  
15 **A. Yes.**  
16 Q. Who gave you that opinion?  
17 **A. Well, as I have stated, I don't know who did.**  
18 **I don't know that anybody did. But I do believe what**  
19 **that paragraph states. Now, whether --**  
20 Q. You just told me that when you voted for the  
21 policy you took into account the opinion of legal  
22 counsel to that effect?  
23 **A. Well, I answered your question based on what**  
24 **you said, but I don't know that we had legal counsel,**

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1 **A. Without -- you are asking -- repeat the**  
2 **question for me, please.**  
3 Q. There is a linkage between the two concepts.  
4 It's because or since the board is a public  
5 legislative and deliberative body, it has the right to  
6 open its meetings with a prayer.  
7 In the absence of legal advice to that  
8 effect, do you think that you, as an individual, would  
9 have said, "Well, I think we have the right to open  
10 our meetings with a prayer because we are a public  
11 legislative and deliberative body." That's a legal  
12 question, isn't it?  
13 **A. Right, as an individual, I would not have**  
14 **known that, no.**  
15 Q. So in forming the view that the Indian River  
16 Board of Education is a public legislative and  
17 deliberative body, you relied on the advice of  
18 counsel; is that correct?  
19 **A. I don't know that. I don't know that counsel**  
20 **ever told us this. Possibly they did, but I can't say**  
21 **that they, that anybody did.**  
22 Q. In making your decision to vote for Board  
23 Policy BDA.1, was one of the factors that you took  
24 into account in considering that decision the opinion

1 **but I can only base it on that paragraph. If I have**  
2 **to exclude legal counsel, that's fine. I don't know**  
3 **that we had legal counsel. I am assuming that we did**  
4 **because I, as an individual, would not have linked**  
5 **those, as I mentioned before.**  
6 Q. Okay. So let's take, as a given, your  
7 assumption for purposes of the next few questions.  
8 Okay?  
9 On the assumption that you had advice that  
10 since the Indian River Board of Education is a public  
11 legislative and deliberative body it has the right to  
12 open its meetings with a prayer, on that assumption  
13 you would agree with me, wouldn't you, that you took  
14 that legal advice into account in deciding whether to  
15 vote for the board policy?  
16 **A. Yes, I would have.**  
17 Q. If I then pursue that farther and say, we  
18 understand that you assume that you got such advice  
19 and so I ask you who gave you the advice, your answer  
20 is you don't know?  
21 **A. That's correct.**  
22 Q. And if I ask you whether you got advice from  
23 more than one source on that subject, legal advice  
24 from more than one source, you don't know?

28 (Pages 106 to 109)

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1 **A. I don't know, but it's very possible.**  
2 Q. Why is it very possible?  
3 **A. Well, we had Mr. Neuberger and Mr. Griffin,**  
4 **there is two attorneys that both or neither may have**  
5 **given us the advice. I don't know.**  
6 Q. Do you recall whether you got differing  
7 opinions on that topic from legal counsel?  
8 **A. On the topic of school prayer, of our policy,**  
9 **or this paragraph?**  
10 Q. This paragraph, that since the Indian River  
11 Board of Education is a public legislative and  
12 deliberative body, it has the right to open its  
13 meetings with a prayer.  
14 **A. I don't recall if we had different opinions.**  
15 **I don't recall.**  
16 Q. Did you get differing advice on the, more  
17 generally, on the issue of school board prayer from  
18 more than one counsel?  
19 **A. Yes.**  
20 Q. And were those counsel Mr. Griffin and  
21 Mr. Neuberger?  
22 **A. Well, they were two of the legal counsel, and**  
23 **then the legal counsel that -- Well, no, I don't know**  
24 **if legal counsel from the insurance company**

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1 **provided -- I don't think they provided anything on**  
2 **the prayer issue.**  
3 Q. So your best recollection is that the  
4 differing advice came from Mr. Griffin and  
5 Mr. Neuberger?  
6 **A. Yes, yes.**  
7 Q. And now I want to ask you about the sequence  
8 in which you received that advice. Is it correct that  
9 you got the advice from Mr. Griffin first and then got  
10 advice from Mr. Neuberger second?  
11 **A. That -- That may have been.**  
12 Q. Is that your best recollection?  
13 **A. Yes, it is.**  
14 Q. And you need to definitely pause before you  
15 answer this question, okay, because Mr. Shau may --  
16 You need to give Mr. Shau a chance to object.  
17 **A. Okay.**  
18 Q. Tell me, as well as you can recall, what the  
19 differences were between the advice Mr. Griffin gave  
20 you and the advice that Mr. Neuberger gave you?  
21 MR. SHAU: Object. The advice given  
22 by counsel is attorney/client privilege.  
23 Don't answer that question. I will instruct  
24 the witness not to answer the question,

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1 please.  
2 BY MR. ALLINGHAM:  
3 Q. Do you understand that this lawsuit is being  
4 prosecuted by the ACLU?  
5 **A. Yes, I do.**  
6 Q. What is the basis for that understanding?  
7 **A. Well, I understand that the ACLU represents**  
8 **the Dobrich family.**  
9 Q. Where did you get that understanding?  
10 **A. I assume one of the attorneys. I don't**  
11 **remember which one.**  
12 Q. You --  
13 **A. Somebody. I can't tell you who it was.**  
14 Q. You talked in some earlier answers about  
15 understanding what the public perceives in your  
16 district. Do you believe that the public perceives  
17 that the ACLU is prosecuting this lawsuit?  
18 **A. I believe so.**  
19 Q. And do you believe that the public views the  
20 board's defense of this lawsuit as, in some sense,  
21 standing up to the ACLU?  
22 **A. In some sense, yes.**  
23 Q. And do you believe that the public views the  
24 defense of this lawsuit as a defense of Christian

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1 values?  
2 **A. Yes.**  
3 Q. Do you believe that the public views the  
4 defense of this lawsuit as a defense of Christian  
5 prayer?  
6 **A. No.**  
7 Q. Do you believe -- What are the Christian  
8 values that you believe the defense of this lawsuit is  
9 perceived to be defending?  
10 **A. The right to pray at a board meeting.**  
11 Q. Why is that a Christian value, but -- Sorry.  
12 Why is that a Christian value as opposed to simply --  
13 Strike that. I will withdraw the question.  
14 Now, in the August 23 board meeting you will  
15 see that no action was taken on Number 0501PL. The  
16 next board meeting was the next day, August 24.  
17 Do you have any recollection of why a special  
18 meeting for the purpose of discussing the school board  
19 prayer issue was scheduled for the day before the  
20 August 24 meeting?  
21 **A. No, I don't.**  
22 Q. It's your understanding of the board's  
23 intention that its meetings be conducted in a  
24 respectful and courteous manner; is that correct?

29 (Pages 110 to 113)

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1 **A. That's correct.**  
2 Q. And the board member who is initially charged  
3 with that is the board president who has the gavel;  
4 correct?  
5 **A. That's correct.**  
6 Q. But would you agree with me that each  
7 individual board member has the obligation to try to  
8 ensure, to the best of his ability, that meetings are  
9 conducted in a courteous and respectful manner?  
10 **A. Yes, I do.**  
11 Q. And if you felt that the board president was  
12 not acting to stop disrespectful or discourteous  
13 behavior, you would do something yourself to address  
14 the issue, wouldn't you?  
15 **A. Yes, I believe I would.**  
16 Q. And would that be to pass a note or speak to  
17 the board president in the first instance?  
18 **A. That could be one of those methods.**  
19 Q. And an alternative would be to stand up and  
20 take action yourself; correct?  
21 **A. If needed.**  
22 Q. During the August 24 board meeting, the big  
23 meeting, did you believe that the conduct of the board  
24 and the members of the public was at all times

1 not be unreasonable for people who had spoken out  
2 against school board prayer to find the atmosphere of  
3 the public session intimidating?  
4 **A. I would, yes, it could be.**  
5 Q. Mr. Evans, do you recall a speaker who spoke  
6 about Madalyn Murray O'Hair during the public comment  
7 session of the meeting?  
8 **A. I believe I do.**  
9 Q. And that was Mr. Harold Johnson?  
10 **A. I don't remember who.**  
11 Q. Did you serve on the school board with  
12 Mr. Harold Johnson?  
13 **A. No, I did not.**  
14 Q. So his term predated 1996?  
15 **A. Yes, that's correct.**  
16 Q. You do know that Mr. Johnson was a former  
17 school board member?  
18 **A. Yes, I do.**  
19 Q. And do you recall that Mr. Johnson spoke at  
20 the big meeting?  
21 **A. Yes.**  
22 Q. Does my saying his name remind you that it  
23 was Mr. Johnson who spoke about Madalyn Murray O'Hair?  
24 **A. No, it does not.**

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1 respectful and courteous?  
2 **A. I believe the conduct of the board was, but**  
3 **not necessarily the public in some instances with the**  
4 **booing. I don't approve of that.**  
5 Q. Did you do anything to stop the booing?  
6 **A. No, I did not.**  
7 Q. Do you recall that the board president did  
8 anything to stop the booing?  
9 **A. I don't recall that he did.**  
10 Q. Looking back on it, do you think that he  
11 should have?  
12 **A. Yes, and second thought, he may have slammed**  
13 **his gavel a couple times. I don't recall, but yes,**  
14 **yes, that should have been stopped.**  
15 Q. Would you agree with me that the booing and  
16 the cheering intensified the emotionally charged  
17 atmosphere of that meeting?  
18 **A. Yes, I do.**  
19 Q. Would you agree with me that the atmosphere  
20 of the meeting was intimidating to persons who spoke  
21 out against school board prayer?  
22 **A. I can't speak for those individuals, but I**  
23 **would think that it would be.**  
24 Q. You would agree, at least, that it would

1 Q. What do you recall about the comments that  
2 were made about Madalyn Murray O'Hair during the  
3 public comment session of the August 24 meeting?  
4 **A. Honestly, I didn't recall it until you**  
5 **mentioned it, but I know that there was something**  
6 **said, but I don't recall exactly what the words were.**  
7 Q. Let me see if I can refresh your recollection  
8 again. Do you recall that a speaker stood up and said  
9 that God had proved that God was the highest power by  
10 the disappearance of Madalyn Murray O'Hair?  
11 **A. I don't remember that specific statement, no.**  
12 Q. Do you recall that the statement was made  
13 that Madalyn Murray O'Hair had disappeared never to be  
14 seen again?  
15 **A. I believe I do recall that part, yes.**  
16 Q. And do you recall that the speaker, in case  
17 that anyone missed the linkage, informed the public  
18 that Madalyn Murray O'Hair was the person who started  
19 the movement to take prayer out of our schools?  
20 **A. I'm sorry, I missed --**  
21 Q. Do you recall that the speaker in his remarks  
22 reminded the public that Mrs. O'Hair was the person  
23 who had led the movement to take prayer out of our  
24 schools?

30 (Pages 114 to 117)



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1 **A. I don't recall that, no.**  
2 Q. I am going to show you Mr. Johnson's  
3 comments. Then I am going to have some questions to  
4 ask you about those comments. If you can't get some  
5 of the words or you would like to have anything  
6 replayed in order to fully understand what Mr. Johnson  
7 said, just speak up. Okay.  
8 (At this time the videotape of Mr.  
9 Johnson's comments was played for the witness.)  
10 MR. LENHARD: Let the record reflect  
11 that was Plaintiff's Exhibit 40, a DVD,  
12 played from one hour and one minute to one  
13 hour and four minutes and 17 seconds.  
14 BY MR. ALLINGHAM:  
15 Q. As Mr. Lenhard's notation about the time of  
16 that speech shows, Mr. Johnson spoke for about three  
17 minutes and 15 seconds. Do you recall whether the  
18 board imposed a time limit on the persons speaking at  
19 the public comment session of this meeting?  
20 **A. I am not sure at this meeting, but there is a**  
21 **time limit on individuals in groups.**  
22 Q. Do you recall that the board shortened that  
23 time for purposes of public comment at the August 24  
24 meeting?

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1 **A. Shortened that time?**  
2 Q. Yes.  
3 **A. No, I don't recall that.**  
4 Q. When Mr. Johnson said, "The U.S. Supreme  
5 Court may be the highest deliberative body of this  
6 nation but there is one higher authority above them,  
7 The Good Lord has proven that," and then said, "The  
8 last I knew, Madalyn Murray O'Hair just disappeared to  
9 never be seen or heard from again," did you understand  
10 that to be Mr. Johnson's attempt to link the fate of  
11 Mrs. O'Hair to what might happen to Mrs. Dobrich if  
12 she continued to oppose prayer at the school board  
13 meeting?  
14 **A. I can't comment on what Mr. Johnson may have**  
15 **thought or said. I don't know, to answer your**  
16 **question.**  
17 Q. That wasn't my question, and it may be a  
18 subtle distinction, but it's a distinction, sir. What  
19 was your understanding, as you sat there during the  
20 board meeting about why in Heaven's name Mr. Johnson  
21 was raising the fate of Mrs. O'Hair in the context of  
22 a public comment on school board prayer? Did you have  
23 any understanding?  
24 **A. I never related or connected it to**

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1 **Mrs. Dobrich's family.**  
2 Q. Well, did you have any understanding about  
3 why Mr. Johnson was raising the -- By the way, did you  
4 know what actually happened to Mrs. O'Hair?  
5 **A. I don't know exactly, but I know that she**  
6 **ended up missing and was found dead somewhere.**  
7 Q. Found dead and dismembered. Do you recall  
8 that?  
9 **A. I remember that now, yes.**  
10 Q. Do you have any idea -- Did you have any idea  
11 at the time as to why Mr. Johnson would talk about the  
12 fate of Madalyn Murray O'Hair in his public comment on  
13 school board prayer?  
14 **A. No, I thought it was uncalled for.**  
15 Q. At the time?  
16 **A. Well, I don't know about the time, but**  
17 **looking back now, it was definitely, it was uncalled**  
18 **for.**  
19 Q. Do you think it would be reasonable for the  
20 Dobrich family -- Let me just give you a preface for  
21 this. The Dobrich family members had already spoken  
22 by the time Mr. Johnson stood up to give his little  
23 speech, and they were still sitting in the audience.  
24 Do you think it would have been reasonable for

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1 Mrs. Dobrich and her family to understand  
2 Mr. Johnson's remarks to have been an implicit threat?  
3 **A. I don't know how they may have felt, and I**  
4 **cannot say that they may have taken it as a threat,**  
5 **but, as I commented, it was very inappropriate. It**  
6 **should not have been said.**  
7 Q. As with Mr. Johnson, I wasn't asking you how  
8 the Dobrich family members took Mr. Johnson's  
9 comments. They can speak for themselves when they  
10 testify.  
11 What I was asking you is do you think it  
12 would be unreasonable for someone in the Dobrich  
13 family's position sitting in that audience to have  
14 felt threatened by Mr. Johnson's remarks?  
15 **A. I am not going to answer that question. I**  
16 **have already answered. I don't know. They may have,**  
17 **but I don't know, and I can't comment whether they**  
18 **felt that way or not.**  
19 Q. No, sir, and it's an important distinction.  
20 I am not asking you how they felt. I am asking you  
21 whether, in your opinion, it would have been  
22 unreasonable for them to have understood Mr. Johnson's  
23 remarks to be threatening?  
24 **A. They could have thought that.**

31 (Pages 118 to 121)

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1 Q. And it would have been reasonable for them to  
2 think that, in your view, don't you think?  
3 **A. That's very possible they may have thought**  
4 **that.**  
5 Q. Did you notice during the clip that we played  
6 that members of the audience started laughing when  
7 Mr. Johnson started discussing Mrs. O'Hair? I can  
8 play it again, if you want me to?  
9 **A. No, I didn't notice that. I did notice the**  
10 **amens and -- I was more attuned to what he was saying.**  
11 **I didn't notice what the crowd was doing.**  
12 Q. You noticed the amens and the cheering during  
13 Mr. Johnson's discussion of Mrs. O'Hair?  
14 **A. Yes.**  
15 Q. Looking at it today, do you find that at all  
16 disturbing that people would be laughing and cheering  
17 and saying amen when Mr. Johnson discussed  
18 Mrs. O'Hair's disappearance?  
19 **A. Yes, I do.**  
20 Q. In retrospect, do you wish that Mr. Walls or  
21 some other member of the board had stopped  
22 Mr. Johnson's comments?  
23 **A. Yes, they should have been -- Yes, it should**  
24 **have been stopped at some point.**

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1 Q. Did you know the August 24 meeting was  
2 videotaped?  
3 **A. I know there were numerous meetings**  
4 **videotaped. The 24th, was that the 24th?**  
5 Q. Yes, the big meeting.  
6 **A. Yes, yes, I was aware of that.**  
7 Q. And were you aware that it was the district  
8 which was taping that meeting?  
9 **A. No, I wasn't.**  
10 Q. So I take it you don't have any idea why the  
11 district decided to tape that meeting?  
12 **A. No, I wasn't aware of it.**  
13 Q. When I played that clip for you, is that the  
14 first time you have ever seen any portion of the  
15 videotape of the August 24 meeting?  
16 **A. Yes.**  
17 Q. You said you were aware that numerous  
18 meetings had been videotaped. When did those meetings  
19 take place?  
20 **A. Well, sometime after that meeting. From**  
21 **where I am sitting, from where I was sitting, you**  
22 **could see someone videotaping in the audience, but I**  
23 **can't tell you specific meetings. I know it was at**  
24 **least two or three or more.**

1 Q. Yes, sir. And, in fact, a representative,  
2 Mr. Horvath, in fact, who is here in the room,  
3 videotaped some meetings as an observer.  
4 Are you aware of any other meetings besides  
5 the August 24 meeting that the district videotaped?  
6 **A. No, no.**  
7 Q. Sir, I will represent to you that on  
8 December 21, 2004 -- These are all meetings of the  
9 board. Okay?  
10 **A. Uh-huh.**  
11 Q. December 21, 2004; January 26, 2005; July 26,  
12 2005; January 24, 2006; and April 25, 2006 you were  
13 invited to and accepted the invitation to open the  
14 board meeting with a prayer, alright, five meetings.  
15 Would I be correct in assuming, based on your  
16 earlier testimony, that the prayer you offered in each  
17 case was offered in the name of Jesus?  
18 **A. That's correct.**  
19 Q. Were there students present at each of those  
20 meetings?  
21 **A. I believe so, yes.**  
22 Q. Do you know the religious faith of those  
23 students?  
24 **A. No, I do not.**

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1 Q. Is it correct that for -- Strike that. Is it  
2 correct that your belief that your prayer was  
3 appropriate is unaffected by the religious faith of  
4 the students who were in the audience, it doesn't  
5 matter what their faith was; correct?  
6 **A. Repeat that, please.**  
7 Q. Yes. Your view, I assume, was that the  
8 prayer you offered at each of those five sessions was  
9 constitutional and appropriate?  
10 **A. Yes.**  
11 Q. And, by that, I mean both constitutional and  
12 appropriate.  
13 **A. Yes.**  
14 Q. Okay, and your view about that, that is that  
15 the prayer was constitutional and appropriate, is  
16 unaffected by what the religious faith of the students  
17 who were present might be; correct?  
18 **A. Correct.**  
19 Q. And is that, sir, because your prayer was  
20 directed only to the ten board members?  
21 **A. That's correct.**  
22 Q. Now, in forming that view, do you also rely  
23 on the fact that the board, through its president,  
24 reads a disclaimer before the prayer is offered?

32 (Pages 122 to 125)

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1 **A. I am aware of that, yes.**  
2 Q. And do you think that provides anyone who  
3 does not wish to hear or participate in the prayer  
4 with an opportunity to get up and leave?  
5 **A. Yes, I do.**  
6 Q. With respect to students who are in  
7 attendance, would you agree with me that it requires  
8 considerable courage for a school child to get up and  
9 walk out of the meeting when a prayer is being  
10 offered?  
11 **A. Yes, it would.**  
12 Q. That's a tough chore to give to a student;  
13 wouldn't you agree?  
14 **A. Yes, it is.**  
15 Q. Because students, just like you, know that  
16 the overwhelming majority of the residents of the  
17 Indian River School District are Christian; correct?  
18 **A. I don't know that they do. They may.**  
19 Q. And it's your belief, isn't it, sir, that the  
20 students, by and large, will not wish to be singled  
21 out as not wanting to participate in a prayer; isn't  
22 that right? Do you want me to ask the question in a  
23 different way?  
24 **A. Yes, yes, a different way, please.**

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1 Q. You testified earlier that it would take  
2 courage, it was a tough chore for a kid to get up and  
3 walk out during the prayer. The reason for that is  
4 that kids don't want to be singled out as a person who  
5 doesn't participate in prayers; correct?  
6 **A. If you leave the last part of that statement**  
7 **out, I might be able to agree with you.**  
8 Q. Okay, I will. One reason for kids requiring  
9 courage and being a tough chore is kids don't like to  
10 be singled out?  
11 **A. I agree with that.**  
12 Q. Period?  
13 **A. Yes.**  
14 Q. And that would include not wanting to be  
15 singled out as a person who doesn't want to  
16 participate in a prayer?  
17 **A. It may.**  
18 Q. Aside from the complaints of the Dobrich  
19 family and the Doe family, are you aware of any other  
20 complaints about the use of prayer during Indian River  
21 School Board meetings?  
22 **A. No, I am not.**  
23 Q. During the course of the board's  
24 consideration of the school board prayer policy during

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1 the public comment sessions, did you hear comments  
2 from persons other than the Dobrich family which urged  
3 the board to consider nondenominational prayer?  
4 **A. Yes.**  
5 Q. Several people?  
6 **A. Yes.**  
7 Q. Mr. Evans, would you agree with me that the  
8 use of prayer before school board meetings has  
9 attracted a lot of attention from the public and the  
10 media in the Indian River School District?  
11 **A. Yes.**  
12 Q. Do you think that the degree of attention  
13 that this issue has gotten -- Strike that. Let me ask  
14 it a different way. Do you think that the issue of  
15 prayer during the school board meeting should have  
16 attracted as much attention by the public and the  
17 media as it has?  
18 **A. You are asking if it should, if I think it**  
19 **should have?**  
20 Q. Yes, sir. Among all the issues that come  
21 before the school board --  
22 **A. No, I don't think it should have.**  
23 Q. And why is that?  
24 **A. There is more important issues for a school**

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1 **district. I mean there are equally important issues**  
2 **that people don't respond to.**  
3 Q. And you are disappointed by the lack of  
4 public response to those other issues, aren't you?  
5 **A. Yes, yes.**  
6 Q. Give me some examples of issues like that.  
7 **A. Whoo, that's a hard one.**  
8 Q. Well, Mr. Hastings, for example, said, you  
9 know, academic issues that come before the board?  
10 **A. Yes, I was thinking academic issues, yes.**  
11 Q. Curriculum issues?  
12 **A. Curriculum issues, yes, those are a couple.**  
13 Q. Budget issues?  
14 **A. Yes.**  
15 Q. Mr. Evans, I'm sorry, I think I asked you  
16 this question. If I did and you have already answered  
17 it, indulge me and just answer it again. You are not  
18 a member of the Policy Committee?  
19 **A. That's correct.**  
20 Q. Thank you. You testified a minute ago that  
21 there were issues which were at least equally  
22 important to you as the school board prayer that don't  
23 get as much attention.  
24 Would you agree with me that all of the

33 (Pages 126 to 129)



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1 issues that we identified in the subsequent questions  
2 are at least equally as important as the school board  
3 prayer policy issue?  
4 **A. I believe so, yes.**  
5 Q. Would you agree with me that those issues are  
6 more important than the school board prayer policy  
7 issue?  
8 **A. I would like to leave it as equally as**  
9 **important.**  
10 Q. Do you know who first proposed that the board  
11 consider adopting a policy on school board prayer?  
12 **A. Specifically an individual?**  
13 Q. Yes.  
14 **A. No, I don't.**  
15 MR. ALLINGHAM: Alright, we are going  
16 to change the tape.  
17 VIDEOGRAPHER: Going off the record at  
18 12:24 p.m.  
19 (A recess was taken.)  
20 VIDEOGRAPHER: Going back on the  
21 record at 12:30 p.m.  
22 BY MR. ALLINGHAM:  
23 Q. I asked you before we broke about who had  
24 first proposed considering the policy on school board

1 Q. Okay. If the board had been praying for 30  
2 years or more, why did it need to adopt a policy?  
3 **A. I thought we had a previous policy.**  
4 Q. I will represent to you that you did not.  
5 **A. Okay.**  
6 Q. Did anyone ever discuss why you needed a  
7 policy in light of the fact that you had been doing  
8 fine without one for 30 years?  
9 **A. Say -- I'm sorry, say that again.**  
10 Q. Did anybody discuss why you had to adopt a  
11 policy in 2004, since it appears that you had been  
12 doing fine for 30 years in opening your meetings with  
13 prayer?  
14 **A. Well, I don't recall, but it seemed the**  
15 **logical, the logical thing to do since it was an**  
16 **issue.**  
17 Q. That is because it had been raised as an  
18 issue?  
19 **A. Yes.**  
20 Q. In your view, did the policy change the  
21 board's practice in any way about how it opened its  
22 meetings with a prayer?  
23 **A. Yes, it did.**  
24 Q. Tell me how.

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1 prayer, and you didn't know. I want to ask you some  
2 questions about whether some statements were made  
3 during the board's consideration of the school board  
4 prayer policy.  
5 Did anybody ever say, in words or substance,  
6 these are in the board deliberations, did anybody ever  
7 say in words or substance, "Nobody should be permitted  
8 to tell me how I should pray"?  
9 **A. Probably, that probably occurred.**  
10 Q. And, having established that it probably  
11 occurred, can you remember in specific a board member  
12 or board members who expressed that sentiment?  
13 **A. No, not specifically I can't tell you.**  
14 Q. Did you ever say during the board  
15 deliberations in words or substance, "Nobody should be  
16 able to dictate how or to whom I pray."?  
17 **A. I may have.**  
18 Q. That's certainly your view; correct?  
19 **A. Yes.**  
20 Q. In the statements made on behalf of the  
21 district in this case, representations have been made  
22 that the board has been praying for 30 years or more  
23 to open its meetings. Did you know that?  
24 **A. Yes.**

1 **A. I don't recall prior to the policy, and it**  
2 **may have been that we rotated, but it may have been.**  
3 **The president may have asked others that chose not to**  
4 **pray. I don't know that.**  
5 Q. And in pointing that out, you are referring  
6 to paragraph two of the policy?  
7 **A. I would have to see paragraph two.**  
8 Q. It's in front of you somewhere, PX9.  
9 **A. PX9. There it is. Yes, it's referred to in**  
10 **that paragraph.**  
11 Q. Do you believe that the board has complied  
12 with the requirements of paragraph two of the policy  
13 since it was passed in October of 2004?  
14 **A. Yes, I believe so.**  
15 Q. I represented to you earlier that you were  
16 invited to and did offer the prayer, among others, on  
17 December 21, 2004, and at the next meeting on  
18 January 26, 2005. Can you explain to me how, if the  
19 opportunity was being rotated, you offered the prayer  
20 at two meetings in a row?  
21 **A. Well, I was asked to by the president, and**  
22 **whether or not the president asked other board members**  
23 **and they declined, that, I don't know.**  
24 Q. Would you agree with me that, as you

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1 understand paragraph two of the policy, the only way a  
2 board member could be offered the opportunity to give  
3 a prayer at two meetings in a row would be if the  
4 other nine board members declined the invitation?  
5 **A. Based on the policy, yes.**  
6 Q. And I take it you don't have any information  
7 that the other nine board members declined the  
8 invitation to offer the prayer on January 26, 2005?  
9 **A. No, I don't.**  
10 Q. We discussed earlier in the deposition,  
11 Mr. Evans, that paragraph three imposes certain  
12 limitations on the content of the prayer that a board  
13 member can offer. Do you remember that testimony?  
14 **A. Yes, I do.**  
15 Q. And paragraph two imposes certain procedures  
16 on the board president in the way he invites or the  
17 persons he invites to open the meetings with a prayer;  
18 correct?  
19 **A. That's correct.**  
20 Q. Okay. Do you know why the board considered  
21 it appropriate to impose those limitations and  
22 procedures on the board's practice of opening its  
23 meeting with a prayer?  
24 **A. You are referring to paragraph two?**

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1 Q. Paragraph two and paragraph three.  
2 **A. Why? You are asking why?**  
3 Q. Yes.  
4 **A. Paragraph two would give any board member an**  
5 **opportunity to pray regardless of their faith or**  
6 **religion, and paragraph three so that we don't try to**  
7 **convert someone to our faith during prayer.**  
8 Q. Or proselytize?  
9 **A. Right.**  
10 Q. At anytime during your tenure as a board  
11 member, had anyone used the opportunity to pray as a  
12 way to convert or proselytize someone?  
13 **A. Not that I am aware of, no, not that I**  
14 **recall.**  
15 Q. So for ten years there had been no  
16 proselytizing or efforts to convert during the prayer  
17 opening the board meetings?  
18 **A. That's correct, to the best of my memory,**  
19 **yes.**  
20 Q. So why did you have to impose such a  
21 restriction if that was already what the board was  
22 doing?  
23 **A. Well, again, because the issue came up. It's**  
24 **better to document it. It's better to have some**

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1 **policy.**  
2 Q. Mr. Evans, if, as I think you testified, the  
3 board members could solemnify their proceedings by  
4 praying privately before the meeting is opened, do you  
5 have any idea why this policy provides specifically  
6 for public prayer by the board members?  
7 **A. Well, public prayer had always been, always**  
8 **been done.**  
9 Q. Can you think of any other reason why the  
10 policy contemplates public prayer?  
11 **A. No.**  
12 Q. Let me ask you this: You have already told  
13 me that the prayer that's offered is not directed to  
14 members of the audience; correct?  
15 **A. That's correct.**  
16 Q. Okay. Based on your understanding of the  
17 views of your constituents, do you think that their  
18 support for board prayer is based in part on their  
19 desire to participate in a prayer at the beginning of  
20 the board meeting?  
21 **A. Would you rephrase that or --**  
22 Q. If the prayer is intended to be only among  
23 the board members, why should the public care about  
24 whether the prayer is public or private?

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1 **A. I don't know why they should care.**  
2 Q. They clearly do care, however; you would  
3 agree with that?  
4 **A. Oh, yes, I would, they do.**  
5 Q. And do you believe the reason they care is  
6 because they view themselves as being participants in  
7 the prayer at the beginning of the board meeting?  
8 **A. That might be.**  
9 Q. Do you remember when Mr. Hastings went off  
10 the board? I don't mean the particular date, just do  
11 you recall that that happened?  
12 **A. Yes, that was in December of 2005.**  
13 Q. And, in order to fill the vacancy left by  
14 Mr. Hastings, the board interviewed candidates;  
15 correct?  
16 **A. Correct.**  
17 Q. And whom did the board interview? One was  
18 Mr. Hughes?  
19 **A. Yes, Mr. Hughes. I know there was one other**  
20 **gentleman, and I don't -- I can't recall his name.**  
21 **There was another, a lady who withdrew her name. We**  
22 **never interviewed her. I believe it was just those**  
23 **two individuals, I believe.**  
24 Q. Were you involved in those interviews?

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1 **A. Yes.**  
2 Q. Did you ask any questions during those  
3 interviews?  
4 **A. Yes.**  
5 Q. Do you recall the substance of your  
6 questions?  
7 **A. No, they were just generally questions that a**  
8 **human resource director would prepare, and we would**  
9 **either choose one of those or we could choose one of**  
10 **our own.**  
11 Q. Let me make sure I understand. So a human  
12 resource director prepared some questions which were  
13 disseminated to the board members?  
14 **A. Yes.**  
15 Q. And is that a human resource director for the  
16 district?  
17 **A. Yes.**  
18 Q. And then you could, you, as a board member,  
19 could ask one of those questions that was provided to  
20 you or you could ask a question of your own; correct?  
21 **A. That's correct.**  
22 Q. Alright, and do you remember whether in those  
23 two interviews you asked questions on the human  
24 resource director's sheet or whether you posed your

1 **A. No, it would not. No, it would not be**  
2 **appropriate.**  
3 Q. I am going to ask you some questions about  
4 prayers that have been offered by board members since  
5 the passage of policy in October of 2004. You  
6 testified earlier in the deposition that Dr. Isaacs  
7 offered a silent prayer. Do you remember that?  
8 **A. Yes.**  
9 Q. How do you know that it was a prayer if it  
10 was silent?  
11 **A. Well, he indicated that before, before it**  
12 **began. He said something to the effect that let's**  
13 **have a silent prayer. I don't remember the exact**  
14 **words, but he made some comment that this will be,**  
15 **let's have a silent prayer. I don't remember exactly,**  
16 **but he announced it.**  
17 Q. Do you recall whether he invited the audience  
18 to join the board members in a silent prayer?  
19 **A. I don't believe he did.**  
20 Q. Do you recall whether any board member since  
21 the passage of this policy has invited the members of  
22 the audience to join the board in a prayer?  
23 **A. No.**  
24 Q. If someone did so, you would agree that

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1 own questions or both?  
2 **A. I used the questions provided by the human**  
3 **resource director.**  
4 Q. There has been testimony that, at least in  
5 Mr. Hastings' interview, there was discussion of the  
6 school board prayer issue. Do you recall that?  
7 **A. A discussion when?**  
8 Q. During the interview of Mr. Hastings.  
9 **A. I don't recall that.**  
10 Q. I apologize, not the interview with  
11 Mr. Hastings, the interview with Mr. Hughes.  
12 **A. Right, understood. I don't recall there**  
13 **being any discussion.**  
14 Q. How about at the other interview, do you  
15 recall there being a discussion of the school board  
16 prayer issue?  
17 **A. No, I don't.**  
18 Q. As a board member, would you think it  
19 appropriate to ask a prospective board member what his  
20 views were on school board prayer?  
21 **A. Would I -- I'm sorry, repeat that question.**  
22 Q. As a board member, would you think it  
23 appropriate to ask prospective board members about  
24 their views on school board prayer?

1 that's inappropriate; correct?  
2 **A. Yes, I would.**  
3 Q. Back to this issue of the interviews of  
4 prospective board members, we have had testimony in  
5 depositions that prior to those interviews there was a  
6 discussion about whether to ask the candidates their  
7 views on the school board prayer. Do you recall such  
8 a discussion?  
9 **A. I don't, but that may have been.**  
10 Q. And I take it from your earlier answer that  
11 if there had been such a discussion, you would have  
12 expressed your view that it was not appropriate to  
13 ask?  
14 **A. Oh, yes, definitely not appropriate.**  
15 Q. Alright. Why do you view it as not  
16 appropriate to ask a prospective board member about  
17 his position on school board prayer?  
18 **A. Well, I don't think that's one of the**  
19 **qualifications of the school board member. His faith**  
20 **and religion has no bearing on his or her serving on**  
21 **the school board.**  
22 Q. Yes, sir, but I didn't ask you about  
23 questions about a person's faith or religion. I asked  
24 you questions whether it was appropriate to ask

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1 questions about a prospective board member's position  
2 on school board prayer, or do you view those as the  
3 same thing?  
4 **A. I just don't think it would be an appropriate**  
5 **question to ask a potential school board member.**  
6 Q. Do you recall that anyone was in favor of  
7 asking the candidates their views on school board  
8 prayer?  
9 **A. No, I don't -- As I mentioned before, I don't**  
10 **recall that that even came up. It may have, but I**  
11 **don't recall that it did.**  
12 Q. Would it be appropriate to ask board members  
13 about their views on curriculum issues?  
14 **A. Yes.**  
15 Q. Would it be appropriate to ask board members  
16 about their views on budget issues?  
17 **A. Yes.**  
18 Q. Would it be appropriate to ask prospective  
19 board members their views on non-curriculum related  
20 educational issues?  
21 **A. Yes.**  
22 Q. You testified earlier that those issues were  
23 equally important as school board prayer issues. Do  
24 you recall that?

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1 **A. Yes.**  
2 Q. Why is it important to ask about curriculum,  
3 education and budget issues but not about the school  
4 board prayer issue?  
5 **A. I just don't think it's appropriate.**  
6 Q. Can you elaborate on why?  
7 **A. I don't think it matters what their religion**  
8 **or faith is to be a school board member. It doesn't**  
9 **play into my decision who I would vote for.**  
10 Q. And do you believe that a candidate's  
11 position on school board prayer is likely to be  
12 affected by the candidate's faith or religion?  
13 **A. Yes.**  
14 Q. Explain to me how.  
15 **A. Well, if I were a candidate, then I, you**  
16 **know, as I have always done, if I am asked to pray, I**  
17 **would pray in Jesus's name. I mean if that's the --**  
18 **You know, if that's the answer you are asking. I am**  
19 **not real clear on the question, but anybody's religion**  
20 **is going to have an impact on their life. If they**  
21 **believe, you know, if they really believe in their**  
22 **faith, it's going to impact their life. You can't**  
23 **separate the two.**  
24 Q. I understand that. In this instance you

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1 would not ask a prospective candidate about his  
2 position on school board prayer because you would view  
3 that as equivalent to asking their religious faith?  
4 **A. Yes, that's right.**  
5 Q. Did you ever come to learn that someone had  
6 been told by a district employee to submit a FOIA  
7 request. Do you know what a FOIA request is, Freedom  
8 of Information Act?  
9 **A. I do now.**  
10 Q. Okay, did you ever come to learn that a  
11 district employee had told a district resident who  
12 asked for a copy of the school board prayer policy  
13 that if she wanted that policy she had to file a FOIA  
14 request?  
15 **A. I have heard that, yes.**  
16 Q. Who did you hear that from?  
17 **A. I don't remember who it was.**  
18 Q. Did, to your knowledge, did anyone from the  
19 board authorize or direct district employees to tell  
20 anyone who wanted a copy of a board policy to file a  
21 Freedom of Information Act request?  
22 **A. Not that I am aware of, no.**  
23 Q. Do you view it as inappropriate for a  
24 district employee to direct someone to file a FOIA

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1 request if they want a policy?  
2 **A. No, I wouldn't -- That might -- If that's our**  
3 **policy, I don't know if it is or not, but if I were a**  
4 **district employee and if I was asked, I would supply**  
5 **that person with what they wanted.**  
6 Q. Is there any reason not to give district  
7 residents a copy of school board policy?  
8 **A. Absolutely not, no.**  
9 Q. Just a couple of quick questions again on the  
10 August 23 minutes. This would be PX14, which still  
11 should be in front of you. And, just to refresh your  
12 recollection, this is the meeting at which, the  
13 special meeting which was called to discuss the school  
14 board prayer issue. Okay?  
15 If you look at other visitors and staff in  
16 attendance, you will see that Lois Hobbs was there.  
17 She is the superintendent at the time?  
18 **A. Yes.**  
19 Q. And does Mrs. Hobbs, did Mrs. Hobbs, when she  
20 was the superintendent, attend every board meeting?  
21 **A. Yes. If she didn't, then Mr. Savage did.**  
22 Q. Or sometimes, as reflected here, both of them  
23 did; right?  
24 **A. Yes.**

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1 Q. Did Janet Hearn typically attend every board  
2 meeting?  
3 **A. Yes.**  
4 Q. She functioned as the secretary?  
5 **A. Yes.**  
6 Q. Mr. Griffin is here, and you have already  
7 identified that he was there for the purpose of giving  
8 legal advice on the issue?  
9 **A. Yes, I believe so, yes.**  
10 Q. Who is Patrick Miller?  
11 **A. He is the director of I want to say**  
12 **budgeting, but he is the director of finance, director**  
13 **of finance.**  
14 Q. And did Mr. Miller typically attend every  
15 board meeting?  
16 **A. Most, yes.**  
17 Q. Do you know why Mr. Miller was in attendance  
18 at this board meeting if the topic was school board  
19 prayer?  
20 **A. Well, if he were there, there may have been**  
21 **some potential discussion of insurance, possibly,**  
22 **insurance coverage. It would have to do with some**  
23 **finances if he were there.**  
24 Q. Alright, these questions relate to

1 the prayer to give it?  
2 **A. Yes, I do.**  
3 Q. Do you recall whether that prayer was offered  
4 in the name of Jesus?  
5 **A. No, I don't.**  
6 Q. I am going to play for you the --  
7 **A. I believe it was, but I am not sure.**  
8 Q. I will represent to you, then, because I  
9 think you are right, that the prayer was offered in  
10 the name of Jesus.  
11 Do you know whether the state legislators who  
12 spoke at the public comment session had seen the text  
13 of that prayer before the meeting?  
14 **A. Do I have knowledge of that?**  
15 Q. Yes.  
16 **A. I am not aware that they did, no.**  
17 Q. At anytime during the board's consideration  
18 of Policy BDA.1, the school board prayer policy, did  
19 any school board member express an opinion that the  
20 school board practice of opening the board's meeting  
21 with prayer might violate the law?  
22 **A. Would you repeat that beginning?**  
23 Q. At anytime during the board's consideration  
24 of the school board prayer policy, did anyone at a

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1 conversations at anytime before the big meeting on  
2 August 24, 2004. Several state representatives spoke  
3 at that meeting. Do you recall that?  
4 **A. At the August 23 meeting?**  
5 Q. The 24th meeting, the big meeting.  
6 **A. Yes, I believe they did.**  
7 Q. Did you know in advance that state  
8 representatives would be speaking at the public  
9 comment session of that meeting?  
10 **A. No, I did not.**  
11 Q. Did you have any conversation with any of  
12 those legislators prior to their speaking at that  
13 board meeting?  
14 **A. No, I did not.**  
15 Q. Do you know whether any school board member  
16 had any conversations with state legislators who were  
17 present at that meeting?  
18 **A. No, I don't.**  
19 Q. The August 24 meeting was a regular meeting,  
20 Mr. Evans. Do you recall that it opened with a  
21 prayer?  
22 **A. Yes.**  
23 Q. Do you recall that there was very loud  
24 cheering when Mr. Walls invited the person who gave

1 school board meeting express -- Strike that. I am  
2 going to start again.  
3 At anytime during the consideration of the  
4 school board's prayer policy, did any board member  
5 express the view that the school board's practice of  
6 opening its meetings with prayer might violate the  
7 law?  
8 **A. I believe so.**  
9 Q. Do you know which board members expressed  
10 that view?  
11 **A. No, I don't.**  
12 Q. Can you narrow it down, for example can you  
13 say with certainty that Mr. Helms did not express that  
14 view?  
15 **A. No, I can't.**  
16 Q. Alright, do you have the board policy in  
17 front of you?  
18 **A. Yes.**  
19 Q. The next questions are addressed to paragraph  
20 three. I am going to give you some examples of  
21 prayers and ask you whether, in your judgment as a  
22 board member, they would violate paragraph three or  
23 would be permitted by it. Okay?  
24 **A. Yes.**

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1 Q. We did this before, but these are written,  
2 some prayers that are written down. Some of them are  
3 a little bit long, and I am going to give you a  
4 printed copy so you can follow along with me as I read  
5 them. The first one has been marked as PX35.

6 And again I am going to read the prayer and  
7 then ask you whether you think it is permitted by or  
8 prohibited by paragraph three, which prohibits  
9 proselytizing or converting prayers.

10 **A. Okay.**

11 Q. Okay? This is the first one. "Do not put  
12 your trust in princes, in mortal men who cannot even  
13 save themselves. When their spirit departs, they  
14 return to the ground. On that very day, their plans  
15 come to nothing. Blessed is he whose help is the God  
16 of Jacob, whose hope is in the Lord, his God, the  
17 maker of heaven and earth, the sea and everything in  
18 them, the Lord who remains faithful forever. He  
19 upholds the cause of the oppressed and gives food to  
20 the hungry. The Lord sets prisoners free. The Lord  
21 gives sight to the blind. The Lord lifts up those who  
22 are bowed down. The Lord loves the righteous. The  
23 Lord watches over the alien and sustains the  
24 fatherless and the widow, but he frustrates the ways

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1 of the wicked. For the wages of sin is death, but the  
2 gift of God is eternal life through Jesus Christ our  
3 Lord."

4 So, in your judgment as a board member, does  
5 that prayer, is that prayer permitted by or prohibited  
6 by paragraph three?

7 **A. It's prohibited by paragraph three.**

8 Q. And why is that?

9 **A. Well, because of the last sentence in  
10 reference to Jesus Christ.**

11 Q. And what is it about the reference to Jesus  
12 Christ that you believe causes it to be prohibited by  
13 paragraph three? Because it's not just the mention of  
14 Jesus Christ; correct? You have offered prayers that  
15 mention Jesus Christ.

16 **A. Oh, yes I have.**

17 Q. Yes, and those prayers, I assume, were  
18 appropriate under paragraph three.

19 **A. Yes.**

20 Q. Okay.

21 **A. Yes.**

22 Q. What is it about the mention of Jesus Christ  
23 in this prayer that you think causes it to be  
24 prohibited by paragraph three?

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1 **A. Well, the last sentence when it says, "The  
2 gift of God is eternal life through Jesus Christ,"  
3 that would violate paragraph three.**

4 Q. And is that because it suggests that the only  
5 way to eternal life is through Jesus Christ?

6 **A. Yes, it does suggest that.**

7 Q. And is that why it is prohibited?

8 **A. Under paragraph three, yes.**

9 Q. Yes. And I want to make sure I understand  
10 this, Mr. Evans. So in your view as a board member,  
11 it's alright under paragraph three to say, "I offer  
12 this prayer in the name of Jesus Christ." Correct?

13 **A. Yes, I do.**

14 Q. But it is not alright to say that salvation  
15 comes through Jesus Christ?

16 **A. Saying that would violate paragraph three.**

17 Q. Let me show you what we have marked as PX45.  
18 This prayer reads, "Heavenly Father, thank you for  
19 this great occasion, for the work, the effort, the  
20 joys and everything that led up to this point in time.  
21 Thank you for your guidance in this event. We pray  
22 for your direction in the lives of each of these  
23 school board members. We pray that you direct them  
24 into the truth and eventually the truth that comes by

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1 knowing Jesus. We also pray that you would be with  
2 them at this time. We ask these things in Jesus's  
3 name. Amen." Is that prayer permitted by or  
4 prohibited by paragraph three?

5 **A. Possibly the sentence, "We pray that you  
6 direct them into the truth and eventually the truth  
7 that comes by knowing Jesus," that might be, that  
8 might violate paragraph three.**

9 Q. You would view that as proselytizing?

10 **A. Yes, I would.**

11 Q. The next prayer may – Your judgment about  
12 the next prayer may seem obvious to you, but I am  
13 going to ask it anyway. Suppose that a board member  
14 offered the prayer, "Oh, Lord, convert the heathen  
15 among us." That would violate it?

16 **A. That would definitely violate paragraph  
17 three.**

18 Q. Yes, sir, or a prayer that said, "Oh, Lord,  
19 bring the Jews in the audience to knowledge and love  
20 of our savior, Jesus Christ."

21 **A. It would violate paragraph three.**

22 Q. And I have one last prayer for you. It's  
23 short, but if you need me to read it again, I will.

24 "Allah, we offer you our school bus drivers. We offer



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1 you our superintendent, our administrators, and our  
2 secretaries. We offer you our teachers and our  
3 parents. Finally, we offer you our students. Peace  
4 be unto your prophet, Muhammed." Would you view that  
5 as permitted or prohibited by paragraph three?  
6 **A. Well, I don't know what the prayer means by**  
7 **offer.**  
8 Q. So, without knowing, you can't make a  
9 judgment?  
10 **A. That's correct. I don't know. Whomever**  
11 **would read that prayer, offer might mean something**  
12 **different to them than it does to me.**  
13 Q. Well, let's explore that a little bit. Do  
14 you have a sense of what you would mean if you offered  
15 a prayer like that where you used the word, "we offer  
16 you our teachers and students," or would you just not  
17 offer a prayer like that?  
18 **A. I wouldn't use the word offer. I might say,**  
19 **you know, protect or help or something along that**  
20 **line.**  
21 **I mean it appears that that would not violate**  
22 **paragraph three, but again it depends on what the word**  
23 **offer means by that individual. I would not be able**  
24 **to determine from that prayer if it violates paragraph**

1 **person should be informed that they are not to pray**  
2 **like that. That violates paragraph three of our**  
3 **policy.**  
4 Q. And all board members should comply with the  
5 policy; correct?  
6 **A. Yes.**  
7 Q. Okay. But, as you pointed out, at that point  
8 the horse would be out of the barn, so to speak?  
9 **A. That's right.**  
10 Q. There is no provision in the policy for a  
11 reprimand or a punishment to a board member. Do you  
12 believe that a board member who offered such a prayer  
13 would be reprimanded or punished?  
14 **A. Do I believe they would? If I were the**  
15 **president, yeah, I would.**  
16 Q. And when you say reprimand, do you mean --  
17 **A. Well, when I say reprimand, I just mean talk**  
18 **to that person and tell them, "Look, you violated our**  
19 **policy, you cannot pray like you just prayed, and, if**  
20 **it happens again, you won't be asked to pray." That's**  
21 **the way I would handle it.**  
22 Q. Okay, and so, as you understand, it's not a  
23 mechanism that's set forth in the policy, but as you  
24 understand the way the policy ought to work, if a

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1 **three.**  
2 Q. Okay. Now, Mr. Evans, we talked earlier in  
3 the deposition about the enforcement mechanism for  
4 this paragraph, and I, I think we established that  
5 it's the board members who are ultimately responsible  
6 for enforcing all of the board prayer policy,  
7 including paragraph three; correct?  
8 **A. Right.**  
9 Q. If a board member offered, I am going to take  
10 the extreme example first or the most extreme example  
11 first, if a board member who was invited by the  
12 president to open a meeting with a prayer said, "Lord,  
13 we pray that you convert the Jews in the audience to  
14 knowledge and love of your son, our Lord, Jesus  
15 Christ," which you and I have agreed, I think, is  
16 violative of paragraph three, --  
17 **A. Yes.**  
18 Q. -- what would you do as a board member?  
19 **A. What would I do?**  
20 Q. If you heard that prayer, what would you do?  
21 **A. Well, at that point it would be a little too**  
22 **late to stop it, but I would -- I would have to talk**  
23 **to the president that that person should be**  
24 **reprimanded. Maybe that's a harsh word, but that**

1 board member offers a prayer that another board member  
2 or the president believes violates the policy, that  
3 board member would be informed that the prayer  
4 violated the policy and then instructed that if he or  
5 she offers such a prayer again he would be taken out  
6 of the rotation?  
7 **A. Yes, I would, yes, that's the way I would**  
8 **handle it.**  
9 Q. And so your understanding is that -- And, by  
10 using a colloquialism, I don't mean to minimize the  
11 importance of the issues, but you understand that with  
12 respect to violations of paragraph three, every board  
13 member would get one bite? That is, you could make a  
14 mistake, you would be reprimanded, you would be given  
15 another opportunity to pray, and, if you did it again,  
16 you would be taken out of the rotation?  
17 **A. Yes, you have to give every board member that**  
18 **first mistake because you don't know, when you ask**  
19 **someone to pray, what they are going to say, so you**  
20 **are sort of open to that possibility, but I wouldn't**  
21 **let it happen, you know, after the second time.**  
22 Q. You wouldn't let it happen a third time?  
23 **A. A third time, that's right.**  
24 Q. At all of the meetings that you attended as a

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1 board member after the adoption of the prayer policy  
2 on October 19, 2004, did you ever see anyone after the  
3 board president read the disclaimer get up and leave  
4 the room?  
5 **A. I don't recall seeing anyone, no.**  
6 Q. In the ten years of your service on the  
7 board, did you ever hear any board member offer a  
8 prayer in the name of any supreme being other than the  
9 Christian God or Jesus Christ?  
10 **A. No.**  
11 Q. Mr. Evans, do you believe that the board,  
12 under its policy, could open its meetings with a  
13 moment of silence?  
14 **A. Yes, I do.**  
15 Q. And, in fact, that did happen at least once  
16 after the policy was adopted?  
17 **A. Yes.**  
18 Q. While you were a board member, if the meeting  
19 was opened with a moment of silence, did you silently  
20 ask for guidance from God through Jesus Christ?  
21 **A. I am not sure. It only occurred once. I**  
22 **don't remember if I did or not.**  
23 Q. Nothing prevented you from doing so?  
24 **A. No, nothing.**

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1 Q. In your view, would a moment of silence be  
2 effective to solemnize the board's proceedings?  
3 **A. Yes, it would.**  
4 Q. At the February 27, 2006 board meeting, this  
5 is the one we referred to earlier where the settlement  
6 vote took place, --  
7 **A. Uh-huh.**  
8 Q. -- the board was in executive session and  
9 then returned to the auditorium to announce its  
10 decision. Do you recall that?  
11 **A. Yes, I do.**  
12 Q. Do you recall that Mr. Helms gave a statement  
13 at that meeting?  
14 **A. Yes, I do.**  
15 Q. Did he tell the board members that he had a  
16 written statement to read before you returned to the  
17 public session?  
18 **A. I don't recall if he said, but it was, I**  
19 **think it was known by the board members. I don't**  
20 **remember how it was known, but I knew that he was**  
21 **going to read a statement.**  
22 Q. Okay. And did he show you the statement in  
23 advance?  
24 **A. No.**

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1 Q. So you didn't know what he was going to say?  
2 **A. No, I did not.**  
3 Q. Do you know whether the statement that  
4 Mr. Helms read was a statement that he had written?  
5 **A. I believe it was.**  
6 Q. He certainly gave no indication at the  
7 meeting that it was not his own words?  
8 **A. No, he did not.**  
9 Q. Did you ever come to learn that they were not  
10 his words?  
11 **A. No.**  
12 Q. Among the statements that he made during his  
13 reading of this statement was a statement that  
14 "Christians should not be made to feel like  
15 second-class citizens because of their religious  
16 beliefs." Do you remember that?  
17 **A. I remember something in reference to**  
18 **second-class citizens, but I don't remember the whole**  
19 **part.**  
20 Q. And do you remember Mr. Helms saying that he  
21 did not think it was appropriate for him to be made to  
22 move to the back of the bus because of his religious  
23 beliefs?  
24 **A. I don't remember that.**

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1 Q. Some of these questions, the answers may seem  
2 obvious, but it's important for me to get a record.  
3 Do you believe that as a school board member  
4 you were obligated to represent the views of everyone  
5 in the district?  
6 **A. Yes, yes.**  
7 Q. That doesn't mean that you would, you could  
8 only take action that everyone in the district agreed  
9 with?  
10 **A. Right.**  
11 Q. But you were obligated to represent everyone  
12 in the district; correct?  
13 **A. Yes, right.**  
14 Q. Or, to say it differently, you did not think  
15 that as a board member you were obligated to do what  
16 the majority of your constituents thought you should  
17 do; correct?  
18 **A. Repeat that, please.**  
19 Q. You were not obligated to do what a majority  
20 of your constituents thought you should do?  
21 **A. I believe that's, yes, that's a true**  
22 **statement.**  
23 Q. In representing the views of everyone in the  
24 district, the way you did that was to exercise your

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1 best judgment; correct?  
2 **A. That's correct.**  
3 Q. Even if your best judgment was against the  
4 views of the majority; correct?  
5 **A. That's correct.**  
6 Q. Is the Indian River School District a  
7 Christian area?  
8 **A. I would say yes.**  
9 Q. What does that mean?  
10 **A. That a majority of the population state that**  
11 **they are Christian.**  
12 Q. Do you think that a Jewish resident of the  
13 Indian River School District would agree with the  
14 statement that this is a Christian area?  
15 **A. I believe so, yes.**  
16 Q. Was the board's willingness to go to court  
17 over the school board prayer issue a campaign issue in  
18 the 2006 school board election?  
19 **A. I don't believe so, no, not that I am aware**  
20 **of.**  
21 Q. Did you run for the school board in the 2006  
22 election?  
23 **A. No.**  
24 Q. Why not?

1 **A. Yes.**  
2 Q. My first question is have you ever seen that  
3 document before?  
4 **A. No, I haven't.**  
5 Q. It's dated October 1, 2004. At or about that  
6 time did you learn that complaints of the type  
7 expressed in this letter had been received by the  
8 district?  
9 **A. Yes.**  
10 Q. How did you learn that?  
11 **A. I believe that it may have been presented by**  
12 **Mrs. Hobbs, I believe.**  
13 Q. Did the board discuss the complaints that are  
14 addressed in this letter?  
15 **A. Well, I am sure we did. I don't remember**  
16 **when.**  
17 Q. Was any action taken in response to this  
18 letter?  
19 **A. That's dated October '04?**  
20 Q. Correct.  
21 **A. 2004? I believe so. I believe Mrs. Hobbs**  
22 **was instructed by the board to take action on some of**  
23 **those issues.**  
24 Q. And did the board later learn that Mrs. Hobbs

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1 **A. Well, I had given the district ten years. I**  
2 **accomplished all the things that I wanted to. As I**  
3 **mentioned earlier, I accomplished assisting with the**  
4 **'96 referendum, that the money was spent as promised,**  
5 **and finalized that with two new schools, so the ten**  
6 **years -- And my children graduated and the time was**  
7 **right.**  
8 Q. I takes it that the decision not to run had  
9 nothing to do with the school board's prayer issue?  
10 **A. No.**  
11 Q. I am going to show you a document which I am  
12 not going to mark. And the reason I am not going to  
13 mark it is that it was written by a member of the Doe  
14 family. I am also, because you have told me you don't  
15 know who the Doe family is, I am masking out the name  
16 at the bottom of the letter.  
17 **A. Uh-huh.**  
18 Q. And my question, my first question to you is  
19 going to be have you ever seen this document before.  
20 Okay?  
21 **A. Do you want me to read it?**  
22 Q. Yes, please.  
23 **A. (Reviewing document)**  
24 Q. Have you finished reading it?

1 had taken action on some of these issues?  
2 **A. I believe so.**  
3 Q. Is it the policy of the district, when  
4 complaints are received from district residents, to  
5 investigate the complaints?  
6 **A. Yes.**  
7 Q. Is it the policy of the board, when the  
8 complaints are found to have substance, to try to  
9 correct the problem that was addressed?  
10 **A. Yes.**  
11 Q. And is it the policy of the board to inform  
12 the district resident who lodged the complaint as to  
13 the resolution of the complaint?  
14 **A. I don't know, but it should be.**  
15 Q. Did the board direct Mrs. Hobbs or any  
16 district employee to respond to this letter?  
17 **A. I don't recall that we did.**  
18 Q. You would agree with me that the letter is  
19 sincere in tone?  
20 **A. Yes.**  
21 Q. Do you think that this letter deserved a  
22 response?  
23 **A. Yes.**  
24 Q. Would it surprise you that no response was

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1 ever given to this letter?  
2 **A. Yes, it would.**  
3 Q. Is it correct that at least, as a matter of  
4 practice, Mr. Evans, the board would not itself  
5 investigate a complaint such as this; rather, it would  
6 direct the superintendent to engage in such an  
7 investigation?  
8 **A. Yes.**  
9 Q. And so that it's your best guess or best  
10 belief that Mrs. Hobbs would have been in charge of  
11 the investigation of these complaints?  
12 **A. Yes.**  
13 Q. Do you recall that Mrs. Hobbs reported to the  
14 board the result of the investigation of these  
15 complaints?  
16 **A. No, I don't.**  
17 Q. Do you know whether any of the matters  
18 complained about were corrected?  
19 **A. I believe some of the things, at least I**  
20 **thought some of them were.**  
21 Q. Would you identify those matters that you  
22 think were addressed? I can give you the letter back  
23 if you like.  
24 **A. Yeah, if you would. One I thought was the**

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1 reference of pressure of children to join the Bible  
2 Club, I thought that had been addressed. That's the  
3 only one I see offhand.  
4 Q. Okay, thank you.  
5 **A. That's the only one I see right now.**  
6 MR. ALLINGHAM: Mr. Evans, we are  
7 going to change the tape. I am going to  
8 look through my notes. I think we are  
9 pretty much complete.  
10 VIDEOGRAPHER: Going off the record at  
11 1:28 p.m.  
12 (A recess was taken.)  
13 VIDEOGRAPHER: Going back on the  
14 record at 1:31 p.m.  
15 MR. ALLINGHAM: Mr. Evans, I have no  
16 further questions. Thank you very much for  
17 your patience and for your candor.  
18 VIDEOGRAPHER: Going off the record at  
19 1:31 p.m.  
20  
21  
22  
23  
24

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1 CERTIFICATE  
2 I, Lorena J. Hartnett, a Notary Public and  
3 Registered Professional Reporter, do hereby certify  
4 that the witness, JOHN M. EVANS, was by me first  
5 duly sworn to testify the truth, the whole truth, and  
6 nothing but the truth; that the foregoing deposition  
7 was taken at the time and place stated herein; and  
8 that the said deposition was recorded stenographically  
9 by me and then reduced to typewriting under my  
10 direction, and constitutes a true record of the  
11 testimony given by said witness.  
12 I further certify that the inspection,  
13 reading and signing of said deposition was not waived  
14 by counsel for the parties and by the witness.  
15 I further certify that I am not a relative,  
16 employee, or attorney of any of the parties or a  
17 relative or employee of either counsel, and that I am  
18 in no way interested directly or indirectly in this  
19 action.  
20 IN WITNESS WHEREOF, I have hereunto set my  
21 hand and affixed my seal of office on this 24th day of  
22 October 2006.  
23  
24 Cert. #134-RPR, Exp. 01-31-2008